THE SOUTHWESTERN SOCIAL SCIENCE QUARTERLY

Vol. XVI March, 1936 No. 4

CONTENTS

PUBLISHED QUARTERLY AT 3225-29 SWISS AVENUE
DALLAS, TEXAS, BY
THE SOUTHWESTERN SOCIAL SCIENCE ASSOCIATION
AUSTIN, TEXAS

"Entered as second-class matter February, 13, 1936, at the Postoffice at Dallas, Texas under the Act of March 3, 1879"

Price $3.00 the year $.75 the copy

THE
SOUTHWESTERN SOCIAL SCIENCE
QUARTERLY

The editors disclaim responsibility for views expressed by contributors to THE QUARTERLY

Vol. XVI MARCH, 1936 No. 4

SOVEREIGNTY AND THE FIFTH ARTICLE

BY RAYMOND UHL
University of Virginia

The system of government created under the Constitution of the United States is essentially an experiment in federalism. As a legal concept, the term "federalism" may be applied to a state in which, "the central or national government is not a mere league . . . still less are its minor communities, the states, mere subdivisions of the Union."[1] "A federal state is a political contrivance intended to reconcile national unity and power with the maintenance of 'state rights.'"[2] "In its relations to other states it is a single state but consists of many states with regard to its internal government."[3] It is a system based on a compromise between the whole and the parts, i.e., between the general government and the states of the Union. If a satisfactory relationship between the two does not exist, there is a two-fold danger: First, if the general government becomes too powerful, it may completely absorb the local units; and second, if the local units become too powerful, the whole system may fall into distintegration. The relationship between the general government and the states is not constant but varies from day to day. There must be a continual readjustment between the whole and the parts or else the system of federal government will become impossible.

The Constitution of the United States provides for a system of government based on the federal principle. To get a clearer understanding of this arrangement, it is necessary to make a distinction between the two senses in which the terminology "federal government" is used.

---

[1]James Bryce, *American Commonwealth* (Abridged Ed. 1920), 4.
[2]A. V. Dicey, *The Law of the Constitution* (Eighth Ed. 1924), 139.
[3]E. A. Freeman, *History of Federal Government* (1863), 2.

In the first place, we may use the expression, "federal government," to mean the government set up under Articles I, II, and III of the Constitution of the United States, which concretely, is composed of a Congress, consisting of a Senate and a House of Representatives; a President, and by implication, administrative departments; and a Supreme Court and a system of inferior courts. In common parlance we speak of this system as "the central government," "the general government," and "the federal government." Only in a very limited sense is this use of "federal government" correct. So long as the system mentioned above is in mind, the use is permissible, but for the sake of clarity it is better to use some other expression when referring to this qualified sense of the word. In this paper I shall use the term "general government" to express the narrower sense of the federal concept and use the expression "federal government" only in the broader sense.

In contrast to the narrower definition of federal government, there is, in the second place, a much broader meaning. The term can be applied to all agencies, state or general, set up under the Constitution of the United States. This interpretation is to be qualified slightly by applying the expression only to those agencies which can change the fundamental law and thus alter the federal system itself. These agencies are provided for under the Fifth Article of the Constitution of the United States.

Four governmental bodies are provided for in the Fifth Article of the Federal Constitution: a Congress, a national convention, stage legislatures and state conventions. Two of these agencies, Congress and the national convention, can only propose amendments, while the state legislatures and state conventions have power only to ratify proposed amendments. There are no restrictions on how the agencies proposing amendments are to be grouped with the ratifying bodies. Consequently, there are four methods by which the Constitution of the United States may be amended:

> First, Amendments may be proposed by two-thirds of both Houses of Congress and be ratified by the legislatures in at least three-fourths of the several states.
>
> Secondly, Amendments may be proposed by two-thirds of both Houses of Congress and be ratified by conventions in at least three-fourths of the several states.

> Thirdly, Amendments may be proposed by a national convention called by Congress on the application of legislatures in at least two-thirds of the several states and be ratified by legislatures in at least three-fourths of the several states.
>
> Fourthly, Amendments may be proposed by a national convention called by Congress on the application of legislatures in at least two-thirds of the several states.

Up to the present time all amendments to the Federal Constitution have been proposed by the Congress and have been ratified by state legislatures or by conventions called in the states for that purpose.

The Congress

The Congress referred to under the Fifth Article is fundamentally different from the Congress set up under the provisions of the First Article. In composition the two bodies are the same. The electorate in the several states of the Union choose their Senators and Representatives to sit in the Congress or legislature of the general government. By virtue of their election to the general Congress these representatives of the people are also made members of the Congress which can propose amendments to the Federal Constitution. Matters of expediency at the time of the framing of the Constitution prevented the "framing fathers" from clarifying the nature of the Fifth Article. As a result of the penumbra in which this article was left, the American people are scarcely aware that these men, whom they elect to the general Congress, can take up the function of proposing amendments to the Federal Constitution with scarcely an interruption of their daily legislative activities. At the very moment such a resolution is introduced in either House, the House in question is serving as an agent of the federal government, using the term, federal government, in its broadest sense. The members cease to act as members of the Congress of Article I and for the period under which amendment proposals are discussed are members of the Congress of Article V.

The use of the same term to cover concepts, which though similar, are different seems to add much confusion to the Constitution. People are prone to accept the same expression as having the

same significance in any place it is used. They find the Congress created in Article I and when they get to Article V they discover the same word again. Their thought processes immediately infer that the Congress in the one case is identical with the Congress in the other. For practical purposes the two have been so considered and it is this failure to make discrimination between them that has led to the presentation of some novel ideas concerning the nature of our federal system. It may help to remove the difficulties if we make the distinction between powers, agents, and functions. This may be expressed quite simply—a power is what one can do; a function is what one does; and the agent is the doer. The representatives elected to the Congress of the general government are agents through which the powers of the general Congress are exercised and they are also the agents by which the powers of the Congress of Article V are exercised. This is the only point at which the two Congresses are identical.

The Constitution of the United States enumerates the powers that the Congress in the one case is identical with the Congress in places limitations on that body with reference to powers which it cannot exercise. Of course by the doctrine of implied powers the Supreme Court of the United States has elaborated on those powers actually granted to the Congress of the general government. There is one fact, however, of cardinal importance, namely, the general government in the final analysis is a governmental agency exercising only limited powers. This fact is likewise true of the President and of the courts. All of them are restricted in their powers by the Constitution of the United States. Similarly, the states, as coördinate parts with the general government, have only those powers reserved to them by the Constitution and not prohibited to them by either the Federal Constitution or their own state constitutions. Hence, neither the general government nor the state governments possess unlimited powers. Their functions are restricted entirely to the power assigned to their particular spheres at any given time. Any attempt to go beyond their prescribed powers would be *ultra vires*.

The Congress under the Fifth Article, while composed of the same representatives as the Congress of Article I and made up of a Senate and House of Representatives as an implication of this identity of membership, has as its function the proposing of amendments to the Federal Constitution. It is a direct agent of the federal state. The nature and extent of its power will be taken up later on in this paper.

The National Convention

The second device set up by the federal constitution for proposing amendments is a national convention. This extraordinary governmental body is brought into being by the Congress of the general government when the legislatures in at least two-thirds of the several states make application for its calling. Since this method has never been resorted to, there arises a number of interesting questions to which we can give but conjectural answers. What form would such applications take? Assuming that the legislatures would act by joint-resolution, it is conceivable that they could ask that a national convention be called to propose amendments upon particular subjects; or they could merely request that this body be called to propose amendments, not restricting the subjects to be taken up. It may be that this body would be obliged to consider questions especially propounded to it by the resolutions of the legislatures, but, on the other hand, it could not be prevented from taking up other subjects, even those expressly denied to it by the legislatures. When convoked, such an assembly could propose amendments on any subject it sought to deal with because it would have unlimited power just as do constitutional conventions in the several states. Jameson, in *The Constitutional Convention* (1887)[4] summarizes the situation very well. He says: "In short, it is in general the right and the duty of a legislature to prescribe when, and where, and how a Convention shall meet and proceed with its business, and put its work in operation, but not what it shall do." Hence, no resolution of the state legislatures or of the Congress of the general government could place limitations on its power.

There is also the question, would Congress be compelled to call a national convention when two-thirds of the states so apply? Professor Beard interprets the expression, "Congress shall call a Convention," to mean that Congress must call a convention[5] and he is probably correct. However, Congress failed to make the apportionment of representatives after the 1920 Cenus[6] and the language of the Constitution is quite as mandatory as that of the Fifth Article. If it is conceded that Congress must call a national convention, when properly petitioned, how is the convention to be made up? Since neither the composition nor the procedure of

[4] *Paragraph* 380.
[5] C. A. Beard, *The American Leviathan* (1930), 40.
[6] *U. S. Constitution*, Art. 1, Sec. 2.

such a body is mentioned in the Constitution, we may presume that since Congress can convene the convention it can also determine these matters. This would be in accord with the notion of Jameson before cited.[7]

The State Legislature

The third agency set up under the Fifth Article is the state legislature. Again there exists a confusion of terms. The ordinary legislative bodies of the several states are known in our law as state legislatures. Like the Congress of the general government, they exercise only limited powers. Restrictions are placed on them by the Federal Constitution, the state constitutions, and the decisions of the courts of both the states and general government, as well as the Supreme Court of the United States. The state legislatures set up under Article V are essentially the same in composition as the ordinary legislatures in that the same members sit in both capacities. So little distinction exists between the two in practice, that people are wont to consider the resolution of the state legislature in ratifying an amendment as only an incident of its ordinary activities. The Supreme Court has been more careful to draw distinctions here than in the case of the Congresses. Mr. Justice Day, speaking for the Court in *Hawke v. Smith,* said:[8] "... ratification by a state of a constitutional amendment is not an act of legislation within the proper sense of the word. It is but the expression of the assent of the state to a proposed amendment." Again in the same case he said: "It is true that the power to legislate in the enactment of the laws of a state is derived from the people of the state. But the power to ratify a proposed amendment to the Federal Constitution has its source in the Federal Constitution." Similar expressions were made by the Court in *Rhode Island v. Palmer,*[9] and *Leser v. Garnett.*[10] Accordingly, the Court decided that ratification by a state legislature could not be made the subject of a referendum. When Congress proposes that amendments be ratified by state legislatures it is not within the power of the states by law or state constitutional amendments to make such ratification subject to any other agencies.

---

[7] *Supra,* p. 6, *note* 4.
[8] 253 U. S. 221
[9] 253 U. S. 350.
[10] 258 U. S. 130.

The State Convention

Finally, under Article V amendments may be ratified by state conventions. How these conventions are to be made up and what procedure is to be followed is as much a mystery as the solution to the problems surrounding a national convention for proposing amendments. The same assumption may be made here that was made there, namely, that since Congress can determine when such a mode of ratification is to be followed, it can likewise prescribe its composition and procedure.

This completes the description of the machinery set up under the Fifth Article. An attempt has been made to present this treatment of the subject in such a way as to demonstrate that besides the ordinary agencies of government the Constitution sets up some extraordinary governmental bodies to whom it entrusts the power of amending the Constitution itself. From their nature these bodies, though some are alike in name to the ordinary bodies, are yet distinctly different from them.

Amendment Procedure

With this notion of the governmental agencies by which amendments are adopted in mind, it is now necessary to investigate the procedure followed. Article V, in part, reads:

> "The Congress whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress . . ."

According to Dr. Beard, proposed amendments are submitted in the following form: "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, that the following article be proposed to the Legislatures of the several states as an amendment to the Constitution of the United States which when ratified by three-fourths of the said Legislatures shall be valid as a part of the said Constitution."[11]

[11]Beard *op. cit.*, 40.

"Two-thirds of both Houses" has been interpreted by the Supreme Court[12] to mean two-thirds of a quorum. By Article I, Sec. 5, "... a majority of each (House) shall constitute a quorum to do business." Obviously, the Court was viewing the federal Congress created in the Fifth Article as identical with the Congress created under the First Article and thus subject to the same limitations. This view is inconsistent with that expressed by the Court in *Hollingsworth v. Virginia*[13] in which the Court held that a resolution proposing an amendment was not subject to Presidential action. On its face this decision appears in direct violation of Article I, Sec. 7, of the Constitution, which provides:

> "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."

It is no argument to say that such a resolution need not be approved by the President because it has already been passed by a majority sufficient to override his veto. As a matter of fact, the veto of any bill or resolution is often of such weight that the bill, though passed by more than two-thirds majority the first time, cannot again receive a two-thirds majority. The Court arrived at its decision on different grounds and, it appears, very safe grounds. It said: "The negative of the President applies only to the ordinary cases of legislation; he has nothing to do with the proposition or adoption of amendments to the Constitution."

The question may justly be asked: How can the Court logically say that Article I, Sec. 5 shall apply to proposals of amendment and at the same time hold that Article I, Sec. 7 does not apply? By the Constitution every resolution, except a question of adjournment, must be presented to the President. By an old rule of logic, *expressio unius exclusio alterius*, it would appear that there could be no other exceptions to the provision. The Court, in deciding that the President's concurrence in acting on amendment

---

[12] *Missouri Pacific Ry. Co. v. Kansas*, 248 U. S. 276.
[13] Dall. 378.

proposals is unnecessary, has seemingly added another exception.[14] It seems to have some notion of the unusual nature of the task of amending the Constitution. More clearly does it realize the peculiarities of our federal system in arriving at the conclusion it does and especially in the manner in which it does it. To justify these two decisions with each other may not be as difficult as first appears.

No provision for a President is made in the Fifth Article. Amendments are proposed by the federal Congress or by a national convention. No other bodies are given any share in this power. The participation of other agents is contrary to the provision of the Constitution. This power is given unqualifiedly to the Congress or its alternate, a national convention, and to none other. Similarly, no rules are prescribed by which the federal Congress must act. We can assume, therefore, that it is competent to make its own rules. What could be more natural than that its members should adopt those rules with which they were familiar. The members were acquainted with the rules of the ordinary Congress, these rules were accordingly adopted. This act may not have been entirely premeditated, but consciously or unconsciously, they were taken over as far as it was advisable into the two Houses when they were serving in this very special governmental body. That the federal Congress could adopt a set of rules quite foreign to the rules of the ordinary Congress cannot be questioned. If it should decide that a quorum to do business was the quorum prescribed for the general Congress, it would be entirely within the bounds of its powers. Should it adopt any other number as a quorum, the Court would be bound to recognize the legality of the situation.

To base its decision in *Missouri Pacific Railway Co. v. Kansas* on a section of the Constitution was merely a convenience for the Court. It likes to find some provision in the Constitution on which to base its conclusion. It seems by so doing that the decisions have a more authoritative sound. Article I, Sec. 5 supplied the convenient peg on which the Court could hang its hat and that was all there was to it, so far as the Court was concerned. It could just as easily have held that the action was quite valid because to so act was a prerogative of the federal Congress. Surely this would have been more in harmony with the federal principle and there would be no apparent conflict with the views put forth in *Hollingsworth v. Virginia.*

There is another way by which this problem may be approached. As an alternative the Constitution provides that "on

[14]Cf. Jameson, *Para.* 557.

the Application of the Legislatures of two-thirds of the several states (The Congress) shall call a Convention for proposing amendments." Surely two-thirds of the several states could not be interpreted two-thirds of a majority of the states. If the Court had been consistent with applying the federal principles of our system, it would have been forced by the analogy to say that "Two-thirds of both Houses" was two-thirds of the total membership of the two Houses, just as "two-thirds of the several states" is only intelligible as two-thirds of all the states. The notion of legislatures of two-thirds of a quorum of the states is so entirely foreign to our judisprudence that is virtually unintelligible.

In fact, by investigating the provisions of the federal Constitution in which majorities are mentioned, one cannot help but be impressed by the clarity of the phraseology and perhaps begin to feel that "two-thirds of both Houses" can only mean "two-thirds of the full membership of the two Houses." Even in the light of these provisions and analogies, the extraordinary nature of the federal Congress seems to warrant the assumption that it can make any rules of procedure it wishes, provided only that when it has decided on its "quorum," the two-thirds rule must be applied.[15]

The action of the Congress in proposing an amendment to the Constitution has been held to be sufficient evidence that Congress has deemed an amendment to be necessary. This view was taken by the Supreme Court in the National Prohibition Cases.[16] The innovation in the Eighteenth Amendment setting a definite time limit in which the states must ratify a given amendment has led to a considerable amount of discussion. This action on the part of the part of the federal Congress was upheld in *Dillon v. Gloss.*[17] In summary, the Court was of the opinion that the acts of proposal and ratification of amendments to the federal Constitution were so closely related that it is safe to say that the act of ratification on the part of the states must follow the act of proposal within a reasonable time. The two acts are but different phases of the one

---

[15]Article V, *Constitution of United States.*

[16]253 U. S. 350, 386. "The adoption by both Houses of Congress, each by a two-thirds vote, of a joint resolution proposing an amendment to the Constitution sufficiently shows that the proposal was deemed necessary by all who voted for it. An express declaration that they regarded it as necessary is not essential. None of the resolutions whereby prior amendments were proposed contained such a declaration."

[17]256 U. S. 368..

process of amending the federal Constitution. Congress could not by *ordinary* legislation attempt to control the time limit within which the ratification should be effective no more than could the states put reservations on the length of time in which ratification would have to be completed. There would be no objection, however, to making such provisions an integral part of the amendment itself. This is exactly what was done in the Eighteenth Amendment.[18]

After it has passed a proposal of amendment the action of the federal Congressends. The state legislatures are then left to their own devices in ratifying or rejecting it. Each individual legislature, it appears, can follow any procedure it wishes. The only requirement, which was noted earlier in this paper, is that the state legislature must act directly and its action can not be made subject to referendum or to the concurrence of other agencies of the state government.

Suppose the convention method is used to pass on a proposed ratification, what procedure must be followed? In adopting the Twenty-first Amendment the state legislatures created the conventions. In Virginia, for example, a convention of thirty members was provided for. The legislature, by law, required that candidates be nominated as favoring or opposing ratification. In the meeting of the convention, the methods of procedure were, for the most part, left to the determination of the convention. The results, of course, of the action of the convention were merely to mark it as a rubber stamp for the electorate.[19]

The Constitution very definitely in express powers gives the Congress the power to determine which mode of ratification will be used. If the convention method is chosen, it seems only logical that the body, Congress, which proposes the use of this method shall have the power of determining, if it wishes, the composition, date of election, date of meeting of the state convention. Just as it seems that under the one method of proposal the initiative rests with the states, so too in this method of ratification it seems that the initiative rests with the Congress to carry the plan to ts logical conclusion.

It is not difficult to imagine a governor refusing to call a state legislature into session to treat with the matter of setting up a convention. It is not to be assumed that the sovereign power is, or that it was ever intended that it should be, subjected to the will

[18]Cf. C. K. Burdick, *Law of the American Constitution* (1922), 39.
[19]*Va. Acts of Assembly*, 1933, *Extra Session*, Ch. 2.

of the governors of the states in this way. The important thing, so far as the Constitution is concerned, is that the convention, no matter how elected and assembled, represents a particular state. It seems that state conventions might be considered as an alternative of equal value to the state legislature. If it can be assembled only with the consent of the state legislature, it is distinctly in a subordinate position to the state legislature and thus in a sense is not in conformity with the express provision of the Constitution.

It may be convenient for the Congress to request that the state legislatures set up the conventions and prescribe the procedure by which they shall be chosen, but the point is it need not be so. Congress is acting in a sovereign capacity when it proposes a constitutional amendment. Unless Congress permits the state legislatures to set up the conventions, it might be assumed that the state legislatures are acting illegally in that they are attempting to set down rules governing the choice of delegates to a sovereign state convention, although in this method as prescribed by the Constitution the state legislature is not even mentioned.

If the Congress proposes an amendment and it is ratified by state legislatures, as proposed by Congress, both Congress and the state legislatures are acting legally. Under this method, action by a convention of the people, even if called by the state legislature, would be of no legal force. (Cf. *Hawke v. Smith*, 253 U. S. 221.) If Congress proposes an amendment and it is to be ratified by state conventions, would not any action on the part of the state legislatures, unless especially permitted by Congress as the proposing body, be equally without legal force? Congress can permit the state legislatures to set up conventions, and it appears that the law is all on the side of Congress if it decides to create the conventions itself by specifying the date of election, the date the convention should meet, and perhaps also the date that the convention must complete its tasks. However, since the convention will be very much in the position of the electoral college, a final date for ratification need not cause much concern.

One question arises. Suppose Congress decides to set the date for the election. Then, suppose the states refuse to put their election machinery into action. What would happen? Congress could make the election officials of the states federal agents for the purpose of the election and if necessary make a federal appropriation to meet the expenses of the election. As a matter of fact, Congress could set up its own election machinery if need arose. This question is quite academic, however. It is quite certain that

if Congress set a date for the election, public clamor will be sufficient to cause them to put their election machinery in motion to do the job. Perhaps an example will make this clearer.

Resolved, etc . . .

Article***

"Section 1. The Congress shall have power to legislate for the general welfare of the United States and may delegate to the President such powers as it shall deem necessary and proper for the carrying out of this provision.

"Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution.

"Section 3. Elections shall be held for the purpose of choosing delegates to the conventions in the several States on the First Tuesday in November, nineteen hundred and thirty-five. The delegates so elected shall meet at their state capitals at twelve o'clock noon on the Third Tuesday in November, nineteen hundred and thirty-five for the purpose of ratifying or rejecting the proposed amendment."

Any other provisions that should be deemed essential should be written into the amendment in the same way as the election dates.

It is an open question as to whether or not resolutions ratifying an amendment are subject to the veto of the governor in the states vesting such power in his hands. The governor is not recognized as an agent under Article V any more than is the President. He is only an agent of the state government and not a federal agent. Consequently, his action seems not only unnecessary but possibly forbidden. In practice the procedure has varied. The governor of New Hampshire vetoed his state's ratification of the Twelfth Amendment, but a sufficient number of other states ratified and this action was never brought before the courts for adjudication. On the other hand, the governor of Arkansas vetoed the Sixteenth Amendment but the action of the legislature was transmitted to the Secretary of State and Arkansas was counted among the ratifying states.[20]

[20]Burdick, *op. cit.*, 42.

Another question of procedure that should be considered is: Can a state which has rejected a proposed amendment reconsider its action and ratify? Dr. Willoughby, regarding this, says: "Until three-fourths of the states have ratified, any state may withdraw a rejection previously given. This, in fact, was done by several states with reference to the Fourteenth Amendment, and the ratifications thus given were accepted as valid. That a ratification once given may not be withdrawn would also seem to be settled by the action taken by the Federal authorities in counting among those ratifying the Fourteenth Amendment certain states which, having ratified, later attempted to reverse this action."[21] The states which rescinded their ratification of the Fourteenth Amendment were New Jersey and Ohio but they were counted among the ratifying states. Refusal to ratify is negative in character. There is no reason why a decision by a ratifying body rejecting a proposed amendment should preclude any future affirmative action. The provision in Article V is strictly affirmative in character. To quote Burdick, "the Constitution declares that an amendment shall become part of that instrument 'when ratified by the legislatures of three-fourths of the states,' and this would seem to mean that the act of ratification is final in each case."[22]

A moment's consideration will easily convince us that, if a state could withdraw a ratification, the situation might, to say the least, be quite confusing. Besides not knowing whether or not a sufficient number of states had ratified a given amendment, there would be a possibility of states nullifying an amendment simply by withdrawing their resolutions of ratification. In this way, for example, it is conceivable that thirteen of the states could, by withdrawing their ratification of the Eighteenth Amendment, nullify it. The consequences of such a practice are clearly evident. It would be just the opposite to the present situation in which thirteen states can keep the amendment in question from being withdrawn from the Constitution.

Power

With this notion of the agencies set up under Article V, the functions they each perform, and the procedure which each follows, it is now time to consider more concretely the power which these agencies exercise.

[21] W. W. Willoughby, *Constitutional Law of U. S.* (Second Student's Ed. 1930), 248.

[22] Burdick, *op. cit.*, 43.

The essential attribute of the State is Sovereignty. In the juristic sense, Sovereignty is the supreme law-making authority in the State. To quote Dr. Willoughby, "Sovereignty is the name given to the supreme will of the State which finds expression in legally binding commands."[23] It is legally omnipotent, unlimited, and illimitable. Since the United States is a State, this attribute of Sovereignty must exist somewhere in it. No agency of the general government—the Congress, the President, or the Courts —exercises it. All of these are given only limited and restricted powers by the Constitution of the United States. Similarly, we find that no agency in the states, whether it be the legislature, the governor, or the courts, possesses such power, for they, too, are limited by the Constitution of the United States. Hence, if this power upon which there are no legal limitations is to be located, it is essential to find wherein rests that power which can amend the federal Constitution. This power can be given expression in accordance with the provisions of the Fifth Article of the Constitution.

That the Sovereign power of the United States finds legal expression in the acts of two-thirds of both Houses of the Congress, which, according to the Constitution, the legislatures in at least three-fourths of the several states concur, is a fact of which we do not seem to be fully aware. It is a power which knows no legal restraints. It can alter the amount of powers exercised by the states or general government even to the extent of destroying their existence. The sphere of individual liberty which Americans, especially anti-prohibitionists, love so much, could be swept away completely. In fact, the government could be given power to prescribe what time we should go to bed at night and arise in the morning. In short, "to presume any legal limitation upon this power is to confuse Sovereignty, the ultimate authority within the State, and Government, the machinery through which this power operates and permits the exercise of certain functions."[24] This sovereign power in the United States has created two distinct sets of organs to each of which it has apportioned certain powers. On these organs it has placed certain limitations in favor of individual liberty. Furthermore, in the Fifth Article it has provided the means by which these relationships may be altered. There is no legal restriction on the extent to which this power may go. This doctrne has been attacked from a great many angles.

[23]W. W. Willoughby, *Fundamental Concepts of Public Law* (1924), 71.
[24]Article by Bruce Williams, 7 *Virginia Law Review*, 280.

It has been argued that there are legal limitations on this power, that some of these are expressly written in the federal Constitution itself and that there are others which are inherent in our federal system of government.

Limitations?

The Fifth Article to the Constitution closes with the provision:

> "that no amendments which may be made prior to year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

The first part of this provision expired in 1808 and is now, so far as its text is concerned, of historical importance only. However, the latter provision guaranteeing to the states, "equal suffrage in the Senate" is vital today. Burdick says that this clause "constitutes a limitation upon the amending power, which can itself only be changed by unanimous consent of the states."[25] There appears to be no doubt in his mind that any change purporting to infringe on this equality of the states would be held as *ultra vires* by the Supreme Court. The suggestion has been made that the Constitution could be amended so as to strike out this limitation and then the representation of the Senate could be changed as easily as any other provision of the Constitution. In this case a protesting state would not have to be considered, if the requisite three-fourths majority is obtained otherwise. There is no reason for a general conclusion, that the unanimous consent of all the states is necessary to alter the equal suffrage in the Senate. For example, if Nevada is to lose one of its Senators and she were to agree to it, only the ordinary three-fourths majority would be necessary. Should she refuse, there would not be the possibility of a unanimous consent at all. Some plausibility may be given to this theory, if approached from another angle. If New York, for example, were to be given three senators, it would then be necessary to get the consent of all the states. The simplest way, as noted above, seems to be to change the Constitution by striking out this limitation. From the juristic point of view the legal sovereign could do this whenever it wished to do so. Express limitation are

[25] Burdick, *op. cit.*, 45.

only formal and in the last resort form only another obstacle to be overcome before the sovereign power can find expression. That the sovereign can surmount such obstructions there can be no doubt. That it will do so presents a point of view not dealt with in the space of this paper.

Mr. Arthur Machen, Jr.[26] in an article published some twenty years ago attacked the Fifteenth Amendment on the grounds that it was in violation of the guarantee of equal suffrage in the Senate. He insisted that an amendment which so increased the voting population of a state as to virtually create a new constituency was unconstitutional. The language he used was somewhat expressive: "The Fifteenth Amendment amounts to a compulsory annexation to each state that refused to ratify it of a black San Domingo within its borders."[27] Mr. Marbury advanced the same argument in his attack on the Nineteenth Amendment. To him, however, the Fifteenth Amendment was now valid because the principal has ratified the unauthorized act of his agent as his own by acquiescing in it.[28] Both felt that the addition of such large blocks of voters to the electorate of a state against its will in effect changed that state's representation in the Senate in violation of the guarantee in Article V.

In the late case of *Sprague v. Howey* in the District Court of New Jersey,[29] it was argued by the counsel that the Ninth and Tenth Amendments were limitations on the power to amend. The Ninth Amendment reads:

> "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

This amendment merely attempts to define the sphere of individual liberty, that which Professor Seeley calls the sphere of civil liberty.[30] It is that tiny realm in which the individual is free from governmental restraint. However, against the will of the sovereign it is powerless and may be completely destroyed by the sovereign's power.

The Tenth Amendment provides:

---

[26]"Is the Fifteenth Amendment Void?" 23 *Harvard Law Rev.* 169.

[27]W. C. Coleman, "The Fifteenth Amendment." 10 *Columbia Law Rev.* 416. Mr. Coleman refuted Mr. Machen's position.

[28]"The Ninetenth Amendment and After." 7 *Va. Law Rev.* 1.

[29]3180 U. S. Daily 6 ff.

[30]*Introduction to Political Science*, 1st. Series, Lecture V.

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

To read from this article a limitation upon the Fifth Article seems indeed a fanciful notion. This amendment attempts to put into writing the doctrine of the delegation of powers. Mr. Bacon argues[31] that the inclusion of the phrase, "to the United States" leads to the inference that there are powers delegated to agencies other than to the United States. The only power he can find so delegated is the power to amend.[32] This is a strained interpretation of the provision. "The powers not delegated to the United States by the Constitution" is an expression which is to be contrasted with the powers "reserved to the states respectively, or to the people." In its proper relationship there can be no hidden meaning in the Tenth Amendment. This view was taken by Mr. Skinner,[33] who tried to explain away the Eighteenth Amendment on the grounds that the Ninth and Tenth Amendments imply the inalienability of the "police powers" from the states even by their own will. Article V, he holds, does not stand alone, but must be viewed with the whole Constitution.[34]

Express limitations are but formal and at most can remain in force only so long as the sovereign permits them. It has been advocated by some writers that there are certain inherent limitations on the amending power. Marbury, for example, insists that the taxing power could not be taken away from the states.[35] In support of this he cites the decision in *McCulloch v. Maryland*[36] that a state could not tax the agencies of the general government, and also the decision in *Collector v. Day*[37] which exempted state agencies from taxation by the general government. With this as a point of departure, he insists that the taxing power is given in quite as general terms as the amending power. "Both of these powers," he says, "are delegated powers pure and simple." Hence,

---

[31]Seldon Bacon, "How the Tenth Amendment Affected the Fifth Article," *16 Va. L. Rev.* 771.

[32]Although powers is written in the plural, he finds but one.

[33]Geo. D. Skinner, "Intrinsic Limitations on the Power to Amend," *18 Mich. Law Rev.* 213.

[34]F. W. Grinnel, "Limitations on the Kind of Amend, etc.," *5 Mass. Law Rev.* 116.

[35]W. L., Marbury, "The Limitations Upon the Amending Power," *33 Harv. Law Rev.* 223.

[36]4 Wheat. 316.

[37]11 Wall. 113.

Congress has no inherent power to adopt and the legislatures have no inherent power to ratify amendments and make them binding on non-assenting states. If Congress cannot destroy the dual system by its taxing powers, he believes, then it cannot destroy the dual system by its power to amend in conjunction with the legislatures in the states. The taxing power is as unlimited as is the amending power.

This contention immediately puts the amending power on the basis of a delegated power. Story, in his work, *On the Constitution*, takes this view when he says, "A power given by the Constitution cannot be construed to authorize the destruction of other powers given in the same instrument."[38] This view is further substantiated by Professor Corwin. In his work entitled, "The Constitution and What It Means Today,"[39] he apparently with some doubts, writes, "Probably the amending power, like all other powers organized in the Constitution, should be regarded as a delegated, and hence a limited power, although this does not necessarily infer that the Supreme Court is vested with authority to determine its limits." As a note to this sentence, he adds, "There may be a difference in this respect between an amendment of a 'political' character which redistributes the power of government or enlarges those of the National Government, and one of 'legislative' character which, like the Thirteenth and Eighteenth Amendments imposes a rule of action upon individuals."

This notion of making the amending power a delegated one is untenable. By definition the sovereign is legally omnipotent, unlimited, and illimitable.[40] A delegated power is at most but a limited one. If the power to amend is limited we must assume that there is some authority capable of establishing such limitations. The only power legally able to do this is that power which can change the Constitution of the United States. Any limitations, express or implied, on the exercise of this power are at most self-imposed and can be removed by the authority which created them. This power has not seen fit to distinguish between amendments of a "legislative" nature and those of a "political character." Legally, therefore, no such distinction exists. Expediency may dictate such a definition of sovereign power but the law does not recognize it.

---

[38]Section 1508.

[39]p. 88.

[40]Cf. John Austin, *Jurisprudence, I* (4th ed.) 268; also A. V. Dicey, *Law of the Constitution*, (8th ed.) 68-82.

The notion that the kind of power to be reallocated determines the mode of amendment to be used is, likewise, fanciful. It may be advisable, as the Clark decision pointed out to use specially chosen conventions of the people when their "rights" are at stake, but from a legal point of view, we must agree that one mode of amendment is just as legally binding as the other.[41] Congress alone determines the mode, and the power to be transferred has no effect because of its nature dictating the method Congress shall follow.[42] "The framers of the Constitution provided two methods by which the nation might express its sovereign will .... There is nothing which indicates a legal supremacy of one method over the other."[43]

It takes but a moment's consideration to find that all of these so-called inherent limitations on the power to amend are based on the same fundamental thesis, namely, the federal system cannot be made the subject of amendment. Roger Sherman advanced such an idea in the First Congress. He said: "All that is granted us by the Fifth Article is, that whenever we shall think it necessary we may propose amendments to the Constitution, not that we may propose to repeal the old, and substitute a new one."[44] Again, there is apparent the efforts to read limitations into the Constitution which do not exist. As long as the people of the United States desire a federal form of government, it is within their power to maintain it, but if they wish to change to the Unitary type like that of France or Great Britain, the means by which this may be done are provided in the Fifth Article. Sovereignty is therein defined. Its scope is legally unlimited and absolute. Upon it there can be no limitations. If our experiment in federalism fails, the power to create a new form in a legal manner is ever within grasp.

---

[41]R. E. Cushman, *26 American Political Science Rev.* 256.

[42]Cf. note (31) supra; also Taft, H. W., "Amendment to the Federal Const." *Va. Law Rev.* 647, and White, J. Dup., "Is There an Eighteenth Amendment?" *5 Corn. Law Rev.* 113.

[43]Cf. *Hawke v. Smith*, 253 U. S. 221.

[44]*Annals of Congress*, Vol. 1, 742.

THE URBAN DISTRIBUTION OF PROMINENT AMERICANS

BY MAPHEUS SMITH
University of Kansas

I

It is common knowledge that cities are the pace-makers and dominant centers of expanding cultures. This phenomenon is an example of a more general principle, namely, that where an entire organized unit is the basis of evaluation, a favorable evaluation is made in terms of the head, or organizing center of the unit. Cities perform the function of organizing and unifying states, regions, and nations, while agricultural areas and small towns merely support the cities, and in a national sense lack the power to impress those who make interpretations and criticisms in terms of the entire geographical and social unit of which both urban and rural areas are but parts.

It is also well known that a man's national prominence depends on his urban prominence. Therefore, it is not at all surprising that the cities are predominantly the places of residence of nationally prominent persons, and that this has always been true in historical times. Any other state of affairs would indeed be incomprehensible. Population centers and territorial social organization always have developed together; and as soon as the basis of regional organization ceases to be purely military, the communities which exist become true cities, with permanence of location, considerable size, density, and diversity of population; and they function as centers of trade, government, and social change.

Some nationally prominent persons do not reside in cities, to be sure, but all—even agricultural leaders—maintain urban affiliations during the time of actual prominence. Rural suburbs claim a considerable number of residents; but only a very small proportion reside in rural communities which are not adjacent to cities, and these maintain urban associations through agents, publishers, membership in national societies, travel, or some other means of contact. More nationally eminent persons are born in rural places than are educated there,[1] and more are educated there than reside

[1]E. H. Lott, "Rural Contributions to Urban Leadership in Montana," *Montana State College of Agriculture, Experiment Station Bulletin 262*, 1932, p. 26; and R. H. Holmes, *Rural Sociology*, New York, 1932, p. 57.

in cities at the time of the achievement which leads to national recognition,[2] all of which is eloquent proof of the urban focus of national social recognition.

In the same way that the national cultural focus is urban rather than rural, it is mainly in certain cities in certain regions rather than in all cities equally. Likewise, there are differences among cities in the distribution of nationally prominent Americans, as studies of the place of residence of persons listed in *Who's Who in America* show.

II

There are two chief methods of comparison of cities as places of residence of eminent persons. We can compare the number of personages without regard to the population of the cities, and we can calculate a ratio of eminent residents to population. Each method has its advantages. The former is a better measure of importance and influence of a city because it ignores the handicap a city suffers in having many people who are not prominent. The average quality of the population of a community, however, can only be determined by relating the number of persons of a certain quality contained in the community to the total number of people. The ratio of eminent persons to population gives this type of measure.

When only the number of prominent persons is considered we find that New York leads the country, followed in order by Washington; Chicago; Boston; Philadelphia; Los Angeles; Baltimore and St. Louis; San Francisco; Pittsburgh; and Cambridge, Massachusetts; each of which had 300 or more nationally prominent residents in 1930. (See Table I) These cities, then, may be called the larger cultural foci of the country, if we mean by a focus of culture a place whence the education, art, wealth, publishing, invention, and government of a region or nation receive their greatest impetus, or a place which has the greatest influence upon the manner of life of the surrounding population.

There are some objections to the use of data on prominent men as evidence of cultural influence in the scientific sense. But this is entirely a question of definition. There can be no question of the bias of *Who's Who in America* toward education, art, science, publishing, and other professional pursuits. The appearance of Cambridge, Massachusetts in the list of leading cities and the absence of Cleveland and Detroit supports such a theory, and even

[2]Comparison of place of birth and place of residence of persons in *Who's Who in America*, reveals this fact.

Table I

Number of Notable Americans Per Ten Thousand Population, 1930, Residing in Largest Cities and in State University Cities*

*Data from *Who's Who in America*, 1930-31 and from *Abstract* of the 1930 Census, Table 12, p. 22. Duplicate names which occurred in such instances as Brooklyn and New York City were only counted once. Only principal state university cities were classified as such, as a result Connecticut, Maine, New Hampshire, and Rhode Island are not represented, because the population of the educational community could not be ascertained. The same thing was true of College Park, Maryland, but, because Baltimore contains part of the University of Maryland it has been considered the location of the state university for the purposes of this study.

City and State	Notable Persons		City and State	Notable Persons	
	Number	No. per 10,000 population		Number	No. per 10,000 population
Birmingham, Alabama 1, 2	99	3.8	Baton Rouge, Louisiana 3	19	6.2
Tuscaloosa and University 3	34	16.5	New Orleans 1, 2	131	2.9
Phoenix, Arizona 2	40	8.3	Portland, Maine 2	50	7.1
Tucson 3	39	12.0	Baltimore, Maryland 1, 2, 3	348	4.3
Fayetteville, Arkansas 3	27	36.5	Amherst, Massachusetts 3	38	64.5
Little Rock 2	55	6.7	Boston 1, 2	1040	13.3
Berkeley, California 3	228	27.8	Cambridge 1	307	27.0
Long Beach 1	24	1.7	Fall River 1	5	0.4
Los Angeles 1, 2	520	4.2	Lowell 1	13	1.3
Oakland 1	46	1.6	Lynn 1	12	1.2
San Diego 1	49	3.3	New Bedford 1	14	1.2
San Francisco 1	328	5.2	Somerville 1	5	0.5
Boulder, Colorado 3	24	21.4	Springfield 1	44	2.9
Denver 1, 2	223	7.7	Worcester 1	78	4.0
Bridgeport, Connecticut 1	18	1.2	Ann Arbor, Michigan 3	137	50.8
Hartford 1, 2	129	7.9	Detroit 1, 2	236	1.5
New Haven 1	231	14.2	Flint 1	5	0.3
Newark, Delaware 3	6	15.4	Grand Rapids 1	45	2.7
Wilmington 1, 2	46	4.3	Duluth, Minnesota 1	33	3.3
Washington, D.C. 1	1977	40.6	Minneapolis 1, 2, 3	248	5.3
Gainesville, Florida 3	15	14.3	St. Paul 1	130	4.8
Jacksonville 1, 2	30	2.3	Jackson, Mississippi 2	35	7.2
Miami 1	36	3.3	Oxford and University 3	15	51.9
Tampa 1	18	1.8	Columbia, Missouri 3	66	44.1
Athens, Georgia 3	33	18.1	Kansas City 1	162	4.1
Atlanta 1, 2	185	6.8	St. Louis 1, 2	348	4.2
Boise, Idaho 2	23	10.7	Butte, Montana 2	20	5.1
Moscow 3	18	40.2	Missoula 3	21	14.3
Chicago, Illinois 1, 2	1521	4.5	Lincoln, Nebraska 3	106	14.0
Peoria 1	18	1.7	Omaha 1, 2	88	4.1
Urbana and Champaign 3	111	33.2	Reno, Nevada 2, 3	35	18.9
Bloomington, Indiana 3	52	28.5	Manchester, New Hampshire 2	17	2.2
Evansville 1	17	1.7	Camden, New Jersey 1	11	0.9

1 City over 100,00 population 2 Largest city in state 3 Seat of state university

Table I (continued)

City and State		Notable Persons	
		Number	No. per 10,000 population
Fort Wayne	1	17	1.5
Gary	1	6	0.6
Indianapolis	1, 2	168	4.6
South Bend	1	18	1.7
Des Moines, Iowa	1, 2	84	5.9
Iowa City	3	69	45.0
Kansas City, Kansas	1, 2	12	1.0
Lawrence	3	55	40.1
Wichita	1	24	2.2
Lexington, Kentucky	3	57	12.5
Louisville	1, 2	120	3.9
Rochester, New York	1	108	3.3
Syracuse	1	109	5.2
Utica	1	18	1.8
Yonkers	1	78	5.8
Chapel Hill, N. Carolina	3	32	118.6
Charlotte	2	31	3.7
Fargo, North Dakota	2	18	6.3
Grand Forks and Uni.	3	27	15.8
Akron Ohio	1	23	0.9
Canton	1	8	0.8
Cincinnati	1	213	4.7
Cleveland	1, 2	291	3.2
Columbus	1, 3	195	6.7
Dayton	1	46	2.3
Toledo	1	50	1.7
Youngstown	1	16	0.9
Norman, Oklahoma	3	29	30.2
Oklahoma City	1, 2	104	5.6
Tulsa	1	53	3.8
Eugene, Oregon	3	23	12.2
Portland	1, 2	102	3.4
Erie, Pennsylvania	1	11	0.9
Philadelphia	1, 2, 3	832	4.3
Pittsburgh	1	324	4.8
Reading	1	14	1.3
Scranton	1	18	1.3
Providence, R. I.	1, 2	174	6.9
Columbia, S. Carolina	2, 3	50	9.7
Elizabeth	1	13	1.1
Jersey City	1	31	1.0
Newark	1, 2	80	1.8
New Brunswick	3	30	8.7
Paterson	1	8	0.6
Trenton	1	34	2.8
Albuquerque, New Mexico	2, 3	39	14.7
Albany, New York	1	104	8.2
Buffalo	1	135	2.4
Ithaca	3	169	81.6
New York City and Brooklyn	1, 2	5113	7.4
Sioux Falls, South Dakota	2	26	7.8
Vermillion	3	22	77.2
Chattanooga, Tennessee	1	39	3.3
Knoxville	1, 3	44	4.1
Memphis	1, 2	64	2.5
Nashville	1	171	11.1
Austin, Texas	3	69	13.0
Dallas	1	117	4.5
El Paso	1	21	2.1
Fort Worth	1	40	2.4
Houston	1, 2	64	2.2
San Antonio	1	39	1.7
Salt Lake City, Utah	1, 2, 3	86	6.1
Burlington, Vermont	2, 3	30	12.1
Charlottesville, Virginia	3	59	38.7
Norfolk	1	38	2.9
Richmond	1, 2	116	6.3
Seattle, Washington	1, 2, 3	144	3.9
Spokane	1	50	4.3
Tacoma	1	29	2.7
Huntington, West Virginia	2	17	2.2
Morgantown	3	37	22.9
Madison, Wisconsin	3	168	29.0
Milwaukee	1, 2	112	1.9
Cheyenne, Wyoming	2	20	11.5
Laramie	3	16	18.6

better proof is furnished by an occupational classification of persons listed in this and other directories of leading contemporaries. (See Table II). One of the most serious objections to the use of directory data as the basis for an index of cultural leadership is the underrepresentation of manufacturers, business men, inventors, and agriculturists. This underrepresentation actually occurs, but, in spite of its shortcomings *Who's Who in America* is probably better than any other single source for studies of nationally prominent Americans. One important fact in its favor is the fairly close correlation between the distribution of such items as great financial institutions, powerful newspapers, large educational institutions, art collections, publishing houses, radio stations, governmental agencies, religious administrative bodies, and medical centers.

Table II

Occupational Distribution of Persons in Biographical Directories in the United States, Germany, Denmark, and Japan, about 1922*

*Adapted from Giese, F., "Die öffentliche Persönlichkeit." *Zeitschrift für angewandte Psychologie*, Beihefte 44, Leipzig, 1928, pp. 236, 240-41. The data for the United States were from *Who's Who in America*, 1922-23; those for the other countries were from the period either a few years before or within five years afterward.

Occupation or Occupational Class	Percentage Distribution			
	United States	Germany	Denmark	Japan
Art	14.04	23.99	12.28	.85
Mental and Natural Science	50.10	47.18	33.92	25.05
Construction and Mining	3.23	1.55	2.69	4.79
Agriculture	1.12	2.90	8.08	4.79
Politics and Administration	11.53	8.19	13.53	18.71
Military Affairs	3.24	3.43	9.30	15.52
Crafts	.08	.67	2.55	.59
Commerce	4.85	2.87	9.26	24.38
Industry	2.77	.90	3.43	3.67
Publicity and Publishing	6.69	5.74	4.51	1.30
Miscellaneous	2.35	2.588	.45	.35
Total	100.00	100.00	100.00	100.00

III

Only Washington and Boston, of cities above a quarter of a million population, are anywhere near the leading communities of the country in per capita concentration of persons listed in *Who's Who in America*. And even they are not the actual leaders in comparison with all urban communities. Chapel Hill, North Carolina, seat of the University of North Carolina, had the distinction of being the nation's leading community as a place of residence of contemporary personages in 1930, with a ratio almost three times as large as that of the nation's capital.

However, in view of the fact that a small city cannot possibly have as much influence as a large city upon the surrounding parts of a nation, it is clear that comparisons of all places above 2,500 population, of whatever quality of population, reveal little to scholars interested primarily in the question of national centers of influence. Comparisons should therefore be made between cities in the same general class, according to population, or according to the dominant societal function or functions in which the cities are national or state leaders.

The class of city of greatest national importance certainly consists of all cities of more than 500,000 population—true metropolitan communities. Washington, D. C., which so closely approached this figure in 1930 should also be added. There are fourteen cities in the resulting group, the rank order being Washington (40 persons in *Who's Who in America* per 10,000 population), Boston (13.3 per 10,000), New York (7.4 per 10,000), San Francisco (5.2 per 10,000), Pittsburgh (4.8 per 10,000), Chicago (4.5 per 10,000), Philadelphia and Baltimore (4.3 per 10,000), Los Angeles and St. Louis (4.2 per 10,000), Cleveland (3.2 per 10,000), Buffalo (2.4 per 10,000), Milwaukee (1.9 per 10,000), and Detroit (1.5 per 10,000). The underemphasis of *Who's Who in America* on industry and trade is again quite plain.

In this group the northeast part of the country contains 6 cities, the southeast 1, the north central 5, the west coast 2, the south central and mountain states none. The eastern and northern focus is thus very pronounced; in fact, St. Louis stands alone in the central part of the country, while from a point in the New England states two main lines of distribution stretch out, one toward the South, the other toward the West. According to the size of the ratios of the cities the north central region appears to be a serious rival of the northeast, but three of the northeastern cities, Boston, New York, and Pittsburgh, surpass Chicago which leads

the north central cities, while the two lowest ratios are for cities which had a north central rather than northeast location.

Among the remaining cities of over 100,000 population in 1930, only Cambridge, Massachusetts; New Haven, Connecticut; and Nashville, Tennessee had ratios above eleven in ten thousand. The first two of these are mainly educational centers; the last is both an educational center and a state capital. Cities from 100,000 to 500,000 population ranged from Cambridge's 27 to Flint, Michigan's. 03 in 10,000. With the first ten of the list including Cambridge, New Haven, Nashville, Albany, Hartford, Denver, Providence, Atlanta, Columbus, and Richmond; and the last ten including Flint; Fall River, and Somerville, Massachusetts; Paterson, and Camden, New Jersey; Gary, Indiana; Canton, Akron, and Youngstown, Ohio; and Erie, Pennsylvania the importance of educational and governmental functions for the determination of national influence is reiterated.

In the cities of this size there is much less concentration of those with large ratios in the east and north. To be sure, of the largest twenty ratios 7 were in the northesat, 6 in the north central, 3 in the south central, 2 in the southeast, and 2 in the mountain sections. However, since thirteen out of the twenty cities with the poorest records were also centered in the northeast and seven in the north central, the most of the advantage the northeast and north central had among the twenty leading cities of this class is lost.

Cities of successively smaller sizes might be considered in turn and comparisons made with each group on the basis of many different facts about each. But chance factors become so great as we study the smaller communities that such comparisons would be of little value. With the exception of state educational centers, which, because of the character of organization of the states, are often located in relatively small cities, practically all important non-political centers of the country are included in the 93 cities of 100,000 or more residents in 1930.

Chapel Hill, North Carolina was well ahead of all other state university cities; followed by Ithaca, New York; Vermillion, South Dakota; Amherst, Massachusetts; University and Oxford, Mississippi; and Ann Arbor Michigan; all of which had ratios over fifty in 10,000. At the other extreme were Seattle, Washington; Knoxville, Tennessee; Philadelphia; Minneapolis; Salt Lake City; Baton Rouge, Louisiana; Columbus, Ohio; New

Brunswick, New Jersey; and Columbia, South Carolina; with ratios under ten per 10,000.

It would also be possible to compare state capitals in the same way, but unlike university cities, state capitals contain a large proportion of officials who are by courtesy considered to be persons of national prominence. Although state capitals, as a group, are above the average for all cities above 100,000 population as places of residence of notable Americans, data for each of these cities should be adjusted for the courtesy factor. This corrective factor should also be applied to the state capitals included in our list, reducing their ratios.

IV

The differences among cities can be examined by various methods in our search for an understanding of the ratios. The first is a discussion of the general characteristics of each city. Boston, with its numerous institutions for higher education, its wealthy and aristocratic families, its traditional prestige, its museums and art galleries, its press and publishing influence, and its religious leadership is a leader in the country both in the quantity of famous residents and in the per capita prominence of its population.

New York, besides being the largest city of the country, is the center of wealth, of trade and commerce, the chief port, the theatrical center, a leading educational and scientific center, the chief radio center, the publishing center, and a main center of the motion picture industry and of fashions and styles. The peer or the acknowledged leader of all cities in the land, it would be incomprehensible if New York were surpassed by any other in the number of eminent citizens. Its ratio per capita is not impressive, but, considering the tremendous number of unnaturalized citizens and socially inferior groups in residence, her ratio is very high indeed.

Washington, the center of permanent government agencies, including political, military and naval, printing, and legal functions; the seat of museums, libraries, art galleries, national memorials; the home of many large, nationally famous institutions of higher education; and the headquarters of scientific societies and organizations, must needs occupy the front rank in both total number and per capita ratio.

The same kind of analysis might continue at great length. Chicago, Philadelphia, Pittsburgh, San Francisco, Los Angeles, St. Louis, Cambridge, New Haven, Denver, Atlanta, Nashville

deserve attention. Newark is a satellite manufacturing city, as is Kansas City, Kansas. The rank of every city can be explained if the trouble is taken to examine its characteristics in any detail.

This method of analysis tells something of the possible explanation, but little more can be expected of such a rough technique. Another method of analysis will give more dependable conclusions if carried out in sufficient detail. It is possible by the use of quantitative comparative methods to show that the possession of important educational centers is one factor. As already pointed out, the average ratio for state university cities is higher than for any other type of city. And when all capital cities containing state universities and all cities of more than 100,000 population are removed from the list the mean ratio becomes even highter. There is thus no single factor so closely related as the presence of a nationally known educational institution to a high ratio of eminent residents to total population, if we are content to accept *Who's Who in America* personages as unquestionably eminent.

The same method of isolating important correlates of high ratios of number of prominent residents to population reveals the fact that it is more important to be the largest city in a state than to be a city of 100,000 and not be the largest city. And the largest city in the state, when it has less than 100,000 population, has more eminent residents per capita than the largest city in a state when that city is above 100,000 population. Being the largest city in a thinly populated or very small state is thus was favorable to a city than being the largest city in a more densely populated state. At the same time, a city which, in addition to having 100,000 or more people, is the largest city in a state, has an advantage over a city of the same size but which is not the largest city in the state. This means that a small city has the ratio advantage over a large city, and that the largest city in a state has the advantage over a merely large city.[3]

The effects of other constellations of factors may be determined in the same way. The state university city of less than 100,000 population has the advantage over that which has over 100,000 population but no state university. Only 2 cities out of 33 of the former type were under 10 per 10,000 in ratio of notable residents, while no city of over 100,000 containing a state university had a ratio greater than 6.7, even those which were also state

[3]In these comparisons all state capitals and state university cities were eliminated

capitals but not largest cities in the state, as well as those which were largest cities but not state capitals, and those which were both largest cities and state capitals.

It is also true—although evidence is very limited—that cities of less than 100,000 population but largest in their states, having state universities but not being the seats of state governments, were superior to all other cities as places of residence of notable persons except small state university cities which were not the largest cities in their respective states. In other words, being the largest city in a sparsely settled state does not give a state university city an equal advantage with a state university city of comparable size in a more thickly populated state.

Many other factors could be isolated by comparisons between other groupings of cities—a technique which approaches experimental controls[4]—if there were more cities. However, because each comparison depends on an average, and because the reliability of the difference between two averages depends to some extent on the number of items contributing to the various averages, this method, to be fully successful, would require thousands of instances. Some of the conclusions mentioned above should be considered as merely suggestions because of the limited number of cases concerned, but the value of the technique is unquestioned, and none of the conclusions is unreasonable or without considerably more support than contrary evidence.

If enough cities existed for the comparisons, the effect of manufacturing, extraction of minerals, fishing, lumbering, and other industries could also be studied. The same thing could be done for groupings of cities according to extent and type of social problems, type of occupational composition, and type of sex, age, race, and nativity composition. But always there are too few communities for us to be able to control all of the variables and at the same time have enough cases in each group to obtain reliable results.

Nevertheless, we may sum up the conclusions from the above comparisons in the form of a rank series of conditions and combinations of conditions which data indicate are associated with the

[4]F. S. Chapin, "The Experimental Approach in the Study of Family Group Patterns," *Social Forces*, XI (1932-33), 200-207; and Mapheus Smith, "A method of Analyzing the Interactions of Children," *Journal of Juvenile Research*, XVII (1932), 78-88, for examples of this comparative technique.

urban distribution of nationally prominent Americans. In the order of their rank, these categories are as follows:[5]

1. State university city under 100,000 population, not the largest city in the state.
2. State university city under 100,000 population which is also the largest city in the state.
3. State university city over 100,000 population which is also the largest city in the state.
4. State university city over 100,000 but not the largest city in the state.
5. Largest city in the state when less than 100,00 population.
6. City over 100,000 population which is the largest city in the state.
7. City over 100,000 population, but not the largest city in the state.
8. City under 100,000 population which is neither and educational center nor the largest city in the state.

V

For a final interpretation of the data on the various cities, we may proceed to develop a theory of the place associations of nationally prominent men. If we assume that *Who's Who in America* contains practically all persons of a national level of importance, and, in general, in the proportions in which persons of each sort of power or position or achievement exist in the country as a whole, we may build such a theory. Consideration will convince one that the distrbution of *Who's Who in America* personages in specific cities is closely related to the location of social institutions or to conditions suitable for individual achievement of nationa' importance. Whether or not a man's environment contributes more to his prestige than he contributes to the prestige of his environment must remain an unanswered question, but it is true that the place of residence does not destroy the prestige, and that the personage adds to the prestige of the community in which he resides. The location of persons with prestige is, in fact, always in places of prestige, and the prestige of place and its inhabitants are indivisible parts of the same context.

[5]The rank of these statements is correct only if each city is treated as a unit equal to every other city in its group, regardless of actual differences. However, if the total population in all of the cities in each group is divided into the number of eminent persons residing in all of the cities in the group, the rank order of the original eight statements is changed to the following, using their original numbers to identify the different classes of cities: 1, 2, 5, 6, 3, 4, 7, and 8.

Because there is only a limited number of persons included in the directory who have specified qualifications for inclusion and are as a consequence automatically included, it is to be expected that places which are the national foci of the activities and conditions having the greatest national prestige value will be most heavily represented; that lesser foci will be more poorly represented; and that places with no influence along a certain line will not be represented at all. This is what actually happens. For example, if, by independent studies, the relative influence of the musical centers of the country were determined, the distribution of nationally prominent musicians would be found to correspond almost, if not identically, with the centers of musical influence. And if the various sorts of national evaluation were combined into composite cultural influences, the cities of greatest national influence would lead as places of residence of prominent Americans. Thus, a measure of educational influence would show that state university cities rank very high, as they do likewise as centers of concentration of educational leaders. The financial center of the country is New York, and it is the place of residence of more nationally recognized financiers than any other city. The governmental city *par excellence* is Washington, and nationally prominent persons associated with government are heavily concentrated there. A partial exception exists in our data in this case, however, since members of Congress do not have their legal residences in Washington. In spite of this, its position is retained. Scientific centers are found in metropolitan areas and in the national capital, and the distribution of leading men of science follows the institutions. Boston is a powerful center of education, wealth, and social prestige, and ranks near the top as a place of residence of prominent personages.

Comparisons might be continued at great length, but always the result would be the same. There is a close correlation between the number of prominent residents of a certain single or combined sort and the influence of the city in the same item or items. Influence and recognition go hand in hand, and each is incomprehensible except in terms of the other. Of course, certain factors might account for slight disparity between the relative influence of a community in a certain item and the relative numbers of prominent residents. One of these is the imperfect selection of persons invited to send biographical sketches to the editors of *Who's Who in America*, and another is the failure of those invited to comply with the request. Of greater importance is the possibility of a

regional focus inherent in the fact that the coordinators of the list reside in definite cities in the eastern section of the country. These sources of error, however, are quite small and by no means disprove the essential and organic relationship between number of nationally prominent residents and the national influence of a community.

The ratios of prominent residents to population can also be interpreted in terms of national centers of influence, but only in terms of population of the same kind as the persons of eminence. It is palpably inaccurate to say that a small state university city in the Middle West, such as Columbia, Missouri, is as important an educational center as New Haven, Connecticut, although the ratio for the former is 44 and for the latter is 14 per 10,000. But if the professional populations, or better still, if the populations affiliated with educational institutions are compared, a truer idea of the national importance of the two will be obtained. And when the number of persons in *Who's Who in America* in each general occupational division is compared with the number in the total population gainfully occupied in the same occupational division, the cities with the largest number of nationally prominent people have a somewhat higher ratio of nationally prominent persons than cities with a smaller number of nationally prominent people. Number of residents of a certain sort is thus related to the quality of those residents. However, the difference in ratio in favor of the cities with more nationally prominent Americans is not as great as the difference in actual number of prominent Americans, partly because of the method of selection of the *Who's Who in America* group, and partly because of a certain lack of agreement between number of residents in a city in an occupation and their quality. If the first of these factors could be controlled, the relationship between number and ratio of nationally prominent Americans probably would prove to be fairly close. For the present, however, the better measure of the national influence of a city in a given social function is its number of nationally prominent residents, rather than the ratios included in this article.

VI

In the discussion of distribution of persons of prominence, it sometimes appears that interpretations are being made wholly in terms of such abstractions as occupational distribution, wealth, institutional organization, pacemakership and dominance, size of population, and quality of population. But there is neither any

intention nor any necessity in leaving the subject permanently among such abstractions. In reality, concepts are but categories which enable us temporarily to forget the human and personal elements which, however, are the justification for the use of the concepts in interpretation. Every ratio, every index of social fact, ultimately involves human beings. Men obtain recognition because they have attributes and do things which impress other men, who in turn are able to give favorable and influential social definitions of the rank and importance of the persons they recognize.

The whole process is human action and interaction. Traditions aid people to judge others and their works. But reputation, personal contact, and friendship also help. Prominent people to a certain extent, therefore, are the acquaintances, associates, and friends of other prominent people, and in any field those who have newly become prominent are known to, and held in esteem or respect by, those whose importance is already established.

This factor of association helps to explain the existence of centers of national influence. Not only is there association, more or less permanent and intimate, between various persons of prominence in the same field, but there is also a tendency for persons working along the same line to reside in the same or neighboring communities, provided their means of support permit it. And if, as the nature of social life in large civilized and urbanized territories demands, those interested in similar problems cannot always reside in the same community, they still are more likely to be found in localities where other men of the same general sort congregate than they are to be found anywhere else.

VII

In conclusion, it should be emphasized that the factors reponsible for the leadership of a certain city as the place of residence of a certain type of man in 1930 will continue to operate and that they definitely limit the chances of development of other cities into positions of euality with or superiority over the leading ones we have discussed here. The organization of the United States is setting very definitely along existing lines and cannot be expected to change greatly after the next thirty or forty years. The headship of the country, in short, is either fully determined now or will be in the near future and that headship will remain as long as the body exists.

For example, consider the government organization. There is no likelihood of any change in the government headship of the

country. The problem of the immediate future in American government is only the ultimate power of the central government; the fact that there will be a central government and that its head and members will retain their present location is never likely to be seriously questioned. The national capital will remain fixed for a long time to come, if not indeed for the remainder of our national history. Even the district centers of federal control, such as seats of Federal courts and Federal Reserve branches will probably remain unchanged. Henceforth, the only noteworthy changes probably will be in the further dispersion of government branch agencies to the large cities, and the increasingly greater centralization of power and administration of the affairs of the country in Washington. None can doubt the increase in interference and control by the Federal government, and this trend is not likely permanently to halt until the Federal government plans for and controls the entire country.

The dominance in finance is just as completely centered in a few places. New York is the nerve center of the financial structure except for the Federal government's financial power and control, although Chicago, Philadelphia, Los Angeles, Detroit, and other metropolitan centers wield considerable influence. Financial control cannot be expected to shift from New York except as the Federal government changes the economic organization of the country, and it is highly unlikely that any change will make New York a secondary center to any other.

In higher educaton there are more centers and none has top honors or is likely ever to dominate as Washington and New York do in government and finance. Boston (with Cambridge), New York, and Chicago (with Evanston) are the main foci now and will remain so for an indefinite period. But Berkeley, New Haven, Philadelphia, Washington, Los Angeles, Pittsburgh, Columbus, and Minneapolis are of great influence also. The East, North, and Far West among them dominate the field, and nothing the other regions may do will alter their status. Raleigh and Durham, North Carolina; and Austin, Texas, the most promising Southern centers, based on resources, and progressive policy have bright futures but are unlikely to change one bit the regional focus of the country's higher education.

The same analysis, applied to communication, transportation and trade centers; to painting, sculpture, music, literature, acting, architecture; to religion; to specific industries; to fashions and styles; and to sports and games; in fact, to any and all of the

culture complexes that are dominent in America shows that, with the exception of two centers on the Pacific coast, and four main centers distributed from the Twin Cities to Cleveland, the seaboard cities from Washington to Boston are the pace setters in every phase of national life. They are the heads and centers of influence, activity, and culture patterns, present and future, of the United States as it is now and as it will be.

Accordingly, the present and future distribution of nationally prominent Americans will remain susbtantially the same as it has been for the greater part of our history. For a generation the New England states have scarcely changed their position as leaders in the concentration of prominent residents, which gives us good reason to believe that the region will not soon lose its place as the leading region of concentration of notable personages. And by the same line of reasoning there is little hope that the fond desires of residents of other regions for a shift in centers of cultural influence will be realized. Such shift as takes place will almost certainly be in the direction of New York, Chicago, and Washington which are the main centers of combined culture influence now, and long have been, but a shift in per capita leadership even in those directions will occur but slowly, although there is equal certainty that the drift of nationally prominent persons toward these cities will continue and may even increase.

J. Q. ADAMS: IMPERIALIST AND APOSTATE

BY R. R. STENBERG

Westerners fervently denounced John Quincy Adams as a "Federal restrictionist" and "Eastern man." They knew not, and were incredulous when assured, that the great Secretary of State under Monroe—co-author of the Monroe Doctrine and the last member of the cabinet to agree to give up the claim to Texas during the negotiation of the Florida treaty—was among the nation's pre-eminent imperialists, to the verge of jingoism. His "latitudinarian" views, says Van Buren, "extended beyond those of any of his contemporaries."[1] He had written to his venerable father in 1811: "The whole continent of North America appears to be destined by Divine Providence to be peopled by one *nation*."[2] In November, 1819, when Crawford mentioned in a cabinet meeting that France and England were "profoundly impressed with the idea that we were an ambitious and encroaching people," Adams replied that

> Nothing that we could say or do would remove this impression until the world shall be familiarized with the idea of considering our proper dominion to be the continent of North America. From the time when we became an independent people it was as much a law of nature that this should become our pretension as that the Mississippi should flow to the sea. Spain had possessions upon our southern and Great Britain upon our northern border. It was impossible that centuries should elapse wthout finding them annexed to the United States . . . because it is a physical, moral, and political absurdity that such fragments of territory . . . should exist permanently contiguous to a great, powerful, enterprising, and rapidly-growing nation . . . any effort on our part to reason the world out of the belief that we are ambitious will have no other effect than to convince that we add to our ambition hypocrisy.

---

[1]John C. Fitzpatrick, Editor, *The Autobiography of Martin Van Buren*, 494-495, 303, in Am. Hist. Assn. *Report*, 1918, II; cf. Dexter Perkins, *The Monroe Doctrine*, 1823-1826 (Cambridge, Mass., 1927), 10.

[2]Worthington C. Ford, *the Writings of J. Q. Adams* (New York, 1913-17 IV, 204-210.

We had acquired territory from Spain by "fair purchase," Adams added, "but if the world do not hold us for Romans they will take us for Jews, and of the two vices I had rather be charged with that which has greatness mingled in its composition."[3]

Though Adams had declared "our unquestionable right to the Rio Grande" as western boundary after the Louisiana Purchase, the claim to Texas was yielded in the acquisition of Florida in 1819. Adams took just pride in the Florida treaty because it gave us a boundary on the "South Sea," a further claim to Oregon. Monroe thought best to forego Texas—which might have been had if insisted upon—in order to quiet opposition in the Northeast. "I am satisfied . . .," he wrote, "and without war, that we might take Florida as an indemnity, and Texas for some trifle, as an equivalent. Spain must soon be expelled from this continent; and with any new government which may be formed in Mexico, it would be easy to arrange the boundary in the wilderness so as to include as much territory on our side as we might desire."[4] Perhaps if it had been foreseen that independent Mexico would be no less averse than Spain to the cession of territory the United States might not have so readily yielded its Texas claim in 1819.

As for Oregon, in making the joint-occupation treaty with England in 1818—decried in the West as another instance of neglect and curtailment by the "Eastern" government—Adams had no intention of weakening our claims. He tells us that Monroe had proposed the forty-ninth parallel as a definite northwestern boundary only in the conviction that England would not accept it, and agreed to joint-occupation, waiving a settlement, because we could with time secure the whole of Oregon through our greater ability to colonize the region.[5] In 1845-46 Adams was one of the belligerent "Fifty-Four Forties." Adams asserted, in conversing with Stratford Canning in 1821, that England had no color of claim to the Columbia River and that our right extended exclusively "to all the shores of the South Sea." "We know of no right that you have there" and "We certainly did suppose that the British Government had come to the conclusion that there would be neither policy nor profit in cavilling with us about territory on this North American continent." Canning inquired,

---

[3]Charles F. Adams, Editor, *Memoirs of John Quincy Adams* (Phila., 1874-77), IV, 438-439.

[4]Monroe to Jefferson, May, 1820, in S. M. Hamilton, Editor, *Writings of James Monroe* (New York, 1898-1903), VI, 119-120.

[5]Adams, *Memoirs*, XII, 221.

"And in this you include our northern provinces on this continent?" "No, there the boundary is marked," Adams replied, "Keep what is yours, but *leave the rest of this continent to us.*"[6]

Adams was largely responsible for the Monroe Doctrine's being a unilateral declaration, and was actuated by imperialistic motive. Secretary Calhoun, like Monroe, strongly favored acceptance of England's proposal of a joint declaration respecting Latin America "even if it should pledge us not to take Cuba or the province of Texas; because the power of Great Britain being greater than ours to *seize* upon them, we should get the advantage of obtaining from her the same declaration." But Adams, whose larger and more confident views prevailed, refused to "tie us down to any principle" which would thwart or hinder our ambitions towards those quarters.[7]

After the Florida treaty Adams confessed that what he declared to the Spanish Minister Onis to be our "entire and unbroken right" to Texas was "a mere color of claim" and that Spain's adverse claim was "much better authenticated." "Still we made the best of the claim that we could, and finally yielded it for the Floridas, and for the line of the 42d degree of latitude." Adams thus carried on without a qualm the Jeffersonian philosophy of territorial claims which he was to expose sarcastically in a speech on Texas in January, 1845: "We have some claim, says Mr. Jefferson, to go to the Rio del Norte, and a better to run as far east as the Perdido. What is the difference in a land claim between *some* claim and a better?"[8]

An ardent expansionist as Secretary of State, Adams later gave his imperialistic feelings free expression on different occasions, especially during the Oregon crisis of 1845-46. To the surprise of many of his compatriots, he endeavored to justify the British invasion of China in the Opium War, on the ground of civilization and Christianity. Moreover, he argued, "in the celestial empire . . . the patriarchal system of Sir Robert Filmer flourished in all its glory," the Chinese held aloof from international commerce and intercourse, and "it is time this enormous outrage upon the rights of human nature and the first principles of the laws of nations should cease."[9]

[6] *Ibid.*, V, 252-253.

[7] *Ibid.*, VI, 177-178.

[8] *Cong. Globe*, 28 Cong., 1 sess., App. 533; Adams, *Memoirs*, V, 67-69 *April 13, 1820;* T. C. Grattan, *Civilized America* (London , 1859), 11,275-277.

[9] Adams' lecture on the Opium War in *Boston Atlas*, December 4, 5, 1841; *Massachusetts Quarterly Review, I*, 353.

He employed a Biblical argument in the Oregon debate in 1846: "Between Christian nations, the command of the Creator lays the foundation of all titles to land, of titles to territory, of titles to jurisdiction." The British claim was not valid because God gave man the right to land to "replenish the earth and subdue it" (Genesis, I, 26-28), and England did not want Oregon for this purpose. She wanted it "that she may keep it open as a hunting ground," while the United States, said Adams, wanted it to fulfill the Biblical specifications.[10] Adams was war-like with regard to Oregon: "After negotiating for twenty years about this matter we may take possession of the subject matter of negotiation. Indeed, we may negotiate after we take possession, and this is the military way of doing business." And he cited the example set by Frederick the Great with his "excellent old *pretensions*" to Austrian Silesia.[11]

Adam's letter to Brantz Mayer on the Florida treaty in 1847 was similarly imperialistic in its implications. "Whoever sets out with an inquiry respecting the right of territories in the American hemisphere claimed by Europeans, must begin by settling certain conventional principles of right and wrong before he can enter upon the discussion." He then cited historical illustrations showing that "right" to territory comes only from conquest and the power to hold—

> "The good old rule, the simple plan,
> That he may take who has the power,
> And he may keep who can."

The will of the strong, termed "right," is the "law" of European nations and euphemistically "called the law of nations . . . .Have the Carribee Indians, in whose possession that Island was discovered by Columbus, ever assented to that system of right and wrong?" Adams implied that there was nothing sacred about European colonial possession to forbid seizure by other powers, that no further "right" accrued to the possessing nation from a period of occupation, that, in short, stolen property did not change its nature with the mere passage of time. Adams had always wished to draw an indelible line between the Old and New Worlds, and had scant respect for the "conventional principles" of Europe, which had little moral

---

[10]Speech of February 9, 1846, in *Mass. Quart. Rev.*, 1, 353.

[11]Speech of January 2, 1846, in Brantz Mayer, *History of the War between Mexico and the United States* (New York, 1847), 115.

weight in his eyes.[12] As to the claims of France and Spain to Texas, Adams says, "I maintained that the question of right had always been disputed and never was settled, from which opinion I have not since varied."[13] In negotiating with Onis in 1818 Adams had been exasperated by Spain's "pretension of engrossing to herself the whole American hemisphere," reminding Onis that the source of Spanish possession was brutal conquest: "You recall to mind with exultation, as if pointing to the most splendid monuments of Spanish glory, the ferociousness with which they attacked, and made prisoners, and put to death, and overthrew, dissipated and destroyed . . . settlements" in making the Spanish Empire. "To all such pretensions on the part of Spain . . . the United States can never accede."[14] Adam's mind presents a curious commingling of puritanic moralism and practical imperialism.

Adams as President instructed his Minister to Mexico, Joel R. Poinsett, to try to purchase Texas. But Poinsett never made a formal overture to the Mexican government, for he saw that such an offer would be considered an insult by Mexico. In 1832, in commenting in his Diary on President Jackson's efforts to purchase Texas, Adams was of opinion that Jackson "would not get it by treaty:" "I believed the increasing settlements in Texas were all from this country, and that the inhabitants would prefer to belong to the United States rather than to Mexico, and it might perhaps be taken, as Florida was taken in 1812. But there would be one difficulty in it, as slavery had been established in that country."[15] He still seems favorable to the acquisition of Texas, but foresees some opposition in a certain quarter of the Union.

Yet in 1836 we find Adams violently opposed to the acquisition of Texas, criticizing the Texas Revolution and denouncing President Jackson's apparent desire to aid that movement underhandedly by sending General Gaines to the Southwestern border and encouraging him to view the Neches River in Texas, instead of the Sabine, as the American boundary.[16] At the same time Adams became a fore-

[12]In his Spanish negotiation Secretary Adams laid down in a note to Onis, March 12, 1818, three rules for the regulation of land titles in America based on European colonization or claims. *American State Papers, Foreign Relations,* IV, 470. Monroe and Pinckney had asserted similar territorial principles in their Spanish negotiation of 1805. *Ibid.,* II, 662-665.

[13]Adams to Mayer, July 7, 1847, in Mayer *op. cit.,* 107-109.

[14]Adams to Onis, March 12, 1818, in *Am. State Pap., For. Rel.,* IV, 475.

[15]Adams, *Memoirs,* VIII, 464-465 (January 31, 1832).

[16]Stenberg, "The Texas Schemes of Jackson and Houston, 1829-1836," in *Southwestern Social Science Quarterly,* XV (1934), 229-250

most champion of the abolition crusade. How are we to explain this sudden apostasy from imperialism on Adams' part, and this new espousal of abolitionism, a thing he had hitherto shunned? Historians have been accustomed to attribute Adams' outcry against Texas early in May of 1836 to feelings outraged at the iniquity of the Anglo-American insurgents in Texas and of Jackson's annexationist intrigues, and to attribute his stepping forth as champion of abolitionism to anger at the denial of the right of petition in the "gag resolution" of May 26, 1836.[17] The present writer wishes to suggest that Adams' motives for standing forth in this new anti-imperialistic and abolitionist position were not so much ethical and abstract as practical and political. It was only natural that he should justify his new position by ethical and abstract principles, but beneath the surface he seems actuated by personal and sectional political motives—by desire to come out strongly as a champion of the North and East to revive his declining prestige and influence in the Massachusetts district he represented and by bitter hatred of Jacksonism and the "demoralizing" political dominance of the South and West.

Adams' administration had been neither pleasant nor overly successful; his measures had been obstructed and he himself had been calumniated at every turn by Jackson and his partisans. The "barbarian" from Tennessee, whose unauthorized invasion of Spanish Florida in 1818 Adams had defended and turned to good diplomatic advantage, had repaid him evil for good.[18] And when Jackson assumed the Presidency Adams' fears were soon justified in the debacle which followed: everything that he had stood for went down under the iron heel of Jacksonism. By nature pugnacious and self-righteous, Adams could not witness all this with philosophic calm and resignation. He had entered Congress, taking a seat in the House in December, 1831, however, "with an assurance to the constitutents . . . that I should hold myself bound in allegiance to no party, whether sectional or political . . . I entered Congress without one sentiment of discrimination between the interests of the North and South."[19]

---

[17]Thus even the latest authority, Gilbert H. Barnes, sees only anti-slavery feelings and constitutional scruples as motives for Adams' course in 1836. Barnes, *The Anti-Slavery Impulse,1830-1844* (New York and London, 1933), 109-129.

[18]Stenberg, "Jackson, Buchanan, and the 'Corrupt Bargain' Calumny," in *Pennsylvania Magazine of History and Biography*, LVIII (1934), 61-85.

[19]Adams, *Address to His Constituents, at Braintree, September* 17, 1842 (Boston, 1842), 27.

In 1835-36, in the fullness of misery and revolt, his utterances show that his ruling passion had become an intense hatred of the triumphant Southern and Western policies which were personified in Jackson—a hatred demanding their discredit and overthrow. Jackson's high-handed Indian removals—attended by unscrupulous diplomacy, enforcement of fraudulent Indian treaties, and hostilities—was a phase of imperialism in the Southwest which excited Adams' anger and aversion. He wrote privately on April 16, 1836, on the eve of allying with anti-slavery:

> I have heard that translations of the inaugural address and of the first annual message have been published in some pamphlet of Chateaubriand, as expositions of the American system of government—but it was only *my* system, and it has been superseded by Bank and Indian wars, Nullification, Tariff Compromises, the surrender of the Colonial trade, and, to use the language of Burke, 'the languishing chimeras of fraudulent reformation.' . . . States-rights and Negro-slavery and agrarian rapacity control the current of our public affairs for the present. . . .The first three years of my administration were occupied in settling the proportion of the spoils between the coalescing parties. The West was bought by the promised plunder of the public lands, a part of the bargain not yet consummated. The South, by the unhallowed sacrifice of the Indians, some of the fruits of which we are now enjoying. Internal Improvement, the manufacturing interests, and free labor were sold for southern machinery, State-right paper money and a simple machine.[20]

Aversion to Jackson's "reform" régime partly caused Adams to join the anti-slavery forces and oppose the program of southwestward expansion in 1836; but besides this and his irrepressible ire at "the gratuitous and ill requiting enmity of President Jack-

[20]Adams to Robert Walsh, April 16, 1836, in *Weekly Missouri Republican* (St. Louis), November 9, 1852. *Cf.* Adams, *Memoirs*, IX, 259 (August 22, 1835); Adams' lecture at New York, August, 1835, in Josiah Quincy, *Memoir of John Quincy Adams* (Boston, 1859), 241-242. For Adams' later expansions on the same theme, see Adams to C. W. Upham, February 2, 1837, in Henry Adams, *The Degredation of the Democratic Dogma* (New York, 1919), 24-25; Adams, *Address to His Constituents, 1842.*

son,"[21] Adams had another urgent motive—desire to insure his re-election to Congress, which was increasingly threatened by the rising anti-slavery power in Massachusetts and by Webster's active hostility towards him. The Texas Revolution of 1835-36, which Americans hastened to take part in, and which involved on Jackson's part a new phase of very questionable "Indian policy" on the frontier, offered Adams—hitherto a derelict in Congress and politics—an opportunity to revive his declining political fortunes and check the growth of Southern and Western political power. It was not imperialism and expansion in the abstract, but southwestward expansion, that aroused his belligerent opposition. "It is no pleasing consideration to find that while our boundary has been constantly advancing on the south it has been receding at the north."[22]

In the pro-slavery aspect of the Texas Revolution he saw a point of attack and also the opportunity to come forth in the new rôle of anti-slavery leader before his Northern constituents. He had noted the possibilities in this field for a man of eloquence long before this, during the Missouri debate of 1820, when he exclaimed in his Diary: "Never since human sentiments and human conduct were influenced by human speech was there a theme for eloquence like the free side of this question . . . .Oh, if but a man could arise with a genius capable of comprehending, a heart capable of supporting, and an utterance capable of communicating those eternal truths that belong to this question, to lay bare in all its nakedness that outrage upon the goodness of God, human slavery."[23] Yet up to 1836 Adams had carefully eschewed and frowned generally upon anti-slavery agitation; his new policy was clearly dictated by political motive. "This is a cause," he wrote in his Diary on June 19, 1836, "which I am entering at the last stage of my life . . . .To open the way for others is all that I can do. The cause is good and great."

On May 7, 1836, Adams began his anti-Texas philippics, denouncing President Jackson for authorizing General Gaines to advance to Nacogdoches in Texas (but in the United States according to Jackson's specious boundary pretension), and declared the Texas Revolution a war for slavery and for annexation to the

---

[21]Adams to Bancroft, October 25, 1835, in *Bulletin of the New York Public Library*, X (1906), 248.

[22]Adams, *Memoirs*, IX, 352 (April 25, 1837).

[23]*Ibid.*, IV, 524-525. Duff Green, *Facts and Suggestions* (New York, 1866), *30-33*, gives an interesting side light on Adams' attitude as to slavery in 1817.

United States brought about through Sam Houston as Jackson's secret agent. Historians lately have pointed to Adams' "absurd tissue of errors" as an indication of uncritical judgment and tendency to self-delusion. But he was probably not as naïve as has been supposed, and no doubt deliberately distorted and exaggerated. He told his friend John M. Botts of Virginia that he was now fighting the foe with his own weapons, the devil with fire. Botts says:

> Mr. Adams had made a speech in which he had given utterance to sentiments on the subject of slavery which did not correspond with the views he had been supposed to entertain; for up to that time he had made himself obnoxious to the Abolition party in his district, and they on several occasions brought forward an Abolition candidate against him.

During the Texas debate in May, 1836, Calhoun, as Botts says, "proclaimed that the great object of the annextation was for the expansion of slave territory, and consequent increase and continuance of power of the *Democracy* of the South, and this it was, *as I had it from his own lips*, that first drove John Quincy Adams into the ranks of the Abolition party." On the adjournment of the House after one of Adams' philippics Botts walked down from the Capitol with Adams, who made now even stronger remarks against slavery. "But, Mr. Adams," said Botts, "you are not an Abolitionist." "Yes, I am," Adams replied:

> I have never been one until now; but when I see the Constitution of my country struck down by the South for such purposes as are openly avowed, no alternative is left me; I must fight the devil with his own fire; and, to do this effectually, I am obliged to co-operate with the Abolition party, who have been hateful to me heretofore. If the South had consulted her true interests, and followed your counsels on the 21st rule and on this Texas question, their institutions would never have been endangered by the North; but if matters are to take the shape foreshadowed by Mr. Calhoun and others of the Democratic party, then no one can foretell what may be the consequences.[24]

[24] John M. Botts, *The Great Rebellion: Its Secret History, Rise, Progress, and Disastrous Failure* (New York, 1866), 95-96; *cf.* William H. Seward, *Life of John Quincy Adams* (Auburn, N. Y., 1849), 270.

The abolitionist James B. Birney, who devoted much attention to legislative bodies to advance political abolitionism, "used fully the agencies under his control to influence public opinion in the Congressional districts represented by John Quincy Adams and by William Slade, of Vermont." Birney says of Adams' sudden profession of sympathy with the Abolitionists: "The abolitionists in electing Mr. Adams made him their *own* witness, hoping, like an eager but inexperienced litigant, that his testimony would be favorable to them, because he was heard to speak freely of the bad character of their adversary." If Adams' intention was to secure the political support of the Abolitionists he succeeded well, Birney said later: "Mr. Adams owes much of his present popularity—may I not say nearly all—to his connection with the anti-slavery agitation. Abolitionists have contributed more than any other class of people to swell the tide of his influence."[25] We have abundant testimony by contemporaries that Adams, though a poor manager of presidential campaigns, was an astute politician, quick to gauge public opinion and ready to utilize it. So good an authority as William H. Seward, biographer and avowed disciple of Adams, believed that his hero adopted anti-slavery in order to remain in Congress. Naming certain Congressmen who lost their seats because of failure to fall in step with public opinion in their constituencies, Seward told Charles Francis Adams that "unless a man can come out on some new course in this country, appear in some new character, as did J. Q. Adams, he must fail as those men failed . . . Mr. Adams . . . was a practical statesman," and "loved combat for combat's sake."[26] That Adams had a close eye to

[25]William Birney, *James G. Birney and His Times* (New York, 1890), 339-340, 343-344. Adams proved much less advanced in the Abolitionist's cause than they were induced to expect from his first utterances against slavery. Birney later complained that he had betrayed them. See Birney's critique on Adams' inconsistent course, in *Ibid.*, 343-344. Adams, for instance, would not aid in the movement to abolish slavery in the District of Columbia, saying that he preferred to keep slavery there as a subject for perpetual agitation. Perhaps Adams' straddling the issue may be accounted for by his desire (which was thwarted by Webster) to be elected to the Senate. See Joshua R. Giddings, *History of the Rebellion* (New York, 1864), 323 note.

[26]*Charles Francis Adams; an Autobiography* (Boston and New York, 1916), 58. *Cf.* Brooks Adams' introductory "Heritage of Henry Adams"—really a sketch of J Q. Adams—in Henry Adams, *Degredation of the Dmocratic Dogma*, 8-11. Henry Adams "took the conventional view of the man . . . that John Quincy Adams had been a political man, actuated by ordinary political feelings," while Brooks Adams had tried to take a more exalted view of their ancestor, until his researches disillusioned him somewhat.

public opinion appears in a comment in his Diary, October, 1837: "I have gone as far upon . . . the abolition of slavery, as the public opinion of the free portion of the Union will bear . . . I have as yet been thoroughly sustained by my own State, but one step further and I hazard my own standing and influence there, my own final overthrow, and the cause of liberty itself."[27]

There was still further reason why Adams should feel the need in the spring of 1836 of coming out in some new position to conciliate his constitutents. His support of Jackson's militant course regarding the claims against France had rendered him unpopular in Massachusetts, and upon that ground Webster in his speech of January 14, 1836, had reopened their quarrel. "Assailed as I was indirectly in that speech," Adams writes Biddle, "it was impossible for me to speak without blasting the last hope of his supporters for the presidential succession. These constituted perhaps a majority of the people of my own State, and accordingly he and his partizans have undertaken to demolish me in my own District, where they have already given notice of their intention to contest my re-election to the next Congress."[28] Adams also speaks in his Diary of having supported Jackson in the affair with France "at the hazard of my own political destruction . . . Though I supported him in other very critical periods of his Administration, my return from him was insult, indignity, slander."

In his anti-Texas philippics in May, 1836, and those later, Adams denied the constitutionality of territorial acquisition. He himself had openly approbated the Louisiana Purchase (a course which had not further endeared him to New England, where he was viewed by many as an apostate because of his early desertion of the Federalist party for the Republican) and he had negotiated the Florida purchase; but now he sought every available argument to check the movement for expansion toward Mexico, which would mean the perpetual political domination of the South and Southwest. The most startling of his utterances in May, 1836, was his threat against slavery if the South should bring on a war with Mexico:

> From the instant that your slaveholding states become the theatre of war, civil, servile, or foreign, from that instant the war powers of Congress extend to inter-

[27]Adams, *Memoirs*, IX, 418.

[28]Adams to Biddle, June 10, 1836, in Charles F. Adams, "John Quincy Adams and Martial Law," in *Massachusetts Historical Society Proceedings*, Series 2, XV, 453-545. *Cf.* Adams, *Memoirs*, IX, 436.

> ference with . . . slavery in every way by which it can be interferred with, from a claim of indemnity for slaves taken or destroyed, to the cession of the state burdened with slavery to a foreign power . . . Your own southern and south western states must be the Flanders of these complicated wars, the battle field upon which the last great conflict must be fought between slavery and emancipation.

Such a war was now in Texas (General Santa Anna having proclaimed the emancipation of slaves illegally brought into Texas), and the South wished to adopt it, said Adams. In speeches in 1841-42 Adams again declared the competence of the war power to abolish slavery, citing South American precedents; and the same theory was called forth during the Civil War, Lincoln's Emancipation Proclamation being based thereon. Long before this, when speaking in the Virginia convention which ratified the Federal Constitution, Patrick Henry had warned the South that slavery could and would be abolished by the Federal government under the war power: "Have they not the power to provide for the general defense and welfare? May they not pronounce all slaves free? and will they not be warranted by that power? The paper [the Constitution] speaks to the point; they have the power in clear, unequivocal terms, and will clearly and certainly exercise it." Thus the idea was not new in 1836, except to Adams himself, who could shift his positions and principles to serve immediate ends as neatly as any politician. Formerly, in regard to the British emancipation of slaves taken in war from the Americans, Adams had held precisely the contrary opinion, writing Rush in 1820:

> The British have broadly asserted the right of emancipating slaves—private property—as a legitimate right of war. No such right is acknowledged as a law of war by writers who admit any limitation. The right of putting to death all prisoners in cold blood, and without special cause, might as well be pretended to be a law of war.[29]

Adams was successful. More than any other individual he was responsible for the long delay in the annexation of Texas after

[29]Adams to Richard Rush, July 7, 1820, in William B. Lawrence, Editor, *Wheaton's Elements of International Law* (Boston, 1863), 496; and in *Law Reporter* (Boston), June, 1862, p. 485.

she gained her independence of Mexico. He did much to discredit Jackson's aggressive policy towards Mexico: "In his perfidious course of policy towards the Indian tribes and Mexico . . . I opposed him so long as he held the reins of power—seldom, indeed, with success, but at least in averting a war with Mexico, and defeating for the time the transfer of the balance of power from the freedom to the slavery section of the Union."[30] And Adams so well conciliated the feelings of his constituents in Massachusetts by his new sectional stand that he intrenched himself firmly in his seat in Congress, whose very halls saw his passing in 1848 and heard his last words, "This the last of earth." Thus, like Webster, Calhoun and other successful Congressmen and statesmen, Adams was ultimately forced into a sectional attitude for political self-preservation. But his new departure gave him a further title to enduring fame, that of "Old Man Eloquent." Like Calhoun he had turned prophet.

[30]Adams' Address, 1842, in *Niles' Register* (Baltimore), LXIII, 171-191. Jackson was duly incensed at Adams for frustrating his plan of annexing Texas immediately in 1836: "The mission of Col. Butler having failed, I then determined to use my influence, after the battle of San Jacinto, to have the independence of Texas acknowledged, and to receive her into the Union. But that arch enemy, J. Q. Adams, rallied all his forces to prevent its annexation." Jackson to W. B. Lewis, September 18, 1843, in William G. Sumner, *Andrew Jackson* (Boston and New York, 1899), 418.

WHAT IS CO-OPERATION?

BY W. E. PAULSON
Texas Agricultural Experiment Station

Farmers organize co-operative associations for the purpose of attaining certain definite and tangible objectives. The success of such ventures depends, in large part, upon two main considerations: the thoroughness with which members comprehend the nature and characteristics of the co-operative type of organization: and the extent to which the members will go in putting this understanding into actual practice. This raises the issue as to what are the fundamental principles of co-operation that members need to understand and apply. In other words, what is Co-operation?

Views of Co-operation

More or less current ideas concerning the chief attributes of co-operation have their influence upon the thought and action of members of co-operatives. If these views be sound and workable, the cause of co-operation would be appreciably stimulated.

To many persons, co-operation is epitomized in a specific type of sale in disposing of the members' products—the seasonal pool, for instance, in contrast with outright sale at the time of delivery. To other persons, co-operation is represented in the local neighborhood enterprise with a small membership and a modest volume of business. To still other persons, co-operation is clothed with reality only in the case of the large-scale organization operating over a far-flung area with a large membership and an imposing volume of business. Then again, to some persons, co-operation merits attention as democracy in action—the one-man-vote principle in contrast to the one vote per share of common stock owned characteristic of the typical stock corporation. Finally, to other persons, co-operation makes its strongest appeal as a standing challenge to the profit motive in industry—the operation at cost principle with all profits distributed to members according to the yardstick of patronage in contrast to profits distributed to investors as in the corporation.

Obviously, these various views are but fragmentary in nature and in no way comprehensive. They call attention to certain details that may, or may not, be important in a clear understanding of the concept, co-operation.

A treatment of the nature and meaning of co-operation to be comprehensive must approach the subject from the standpoint of a broad philosophical background. Co-operation is a group action. It is therefore not a unique phenomenon. Man is born into a social order in which he becomes a member of many kinds and types of group activities, both compulsory and voluntary. He has learned through long and painful experience that some form of stable and active government is essential to afford protection to his person and property, and offer him various services necessary in promoting individual and general welfare. The police and fire departments; the public schools and libraries; the public parks and playgrounds; and the public highways and postal service, are but a few manifestations of necessary and salutary governmental activities.

Through a wide variety of voluntary group activities, man has sought a fuller, a more complete and a more satisfactory life. The church and the political party; the labor union and the private corporation; and the general farmers' organization and the co-operative, are but a few examples of voluntary group activities organized and maintained for the specific purpose of furthering the welfare of members and the general public. Evidently, the co-operative association is a member of a large family of organized groups. As such, it has significance from the standpoint of its relations to other organized groups as well as to its own members.

Adapation of Co-operative to Economic Needs of Farmers

The unique feature about co-operation, and more specifically, agricultural co-operation, is that it represents a type of organized group action which has been adapted to the problems and needs of the farmer under his peculiar economic situation. The farmer has products to sell; or he wishes to buy supplies needed in production; or he requires certain essential services. The farmer joins a co-operative not with the idea of establishing a profitable enterprise unrelated to his farming operations but rather as the means of carrying on his farming operations more profitably. Co-operation places the stress on the members' relation to it as a patron, the one who furnishes the business. The patronage relation between a member and his co-operative stands in sharp contrast to the investor relation of an owner of common stock and his private stock company.

Co-operation comprehends the complex problems of individual rights and duties, benefits and responsibilities as against

group interests and responsibilities. A rather common difficulty among members of a co-operative association is that of being able to visualize their association as an entity separate and distinct from themselves. Too often members think strictly in terms of their own personal self interest feeling that their co-operative should afford them a steady uninterrupted flow of benefits without calling for contributions of any sort in return. They do not seem to realize that their association must depend for management, financial support and patronage upon its members. A considerable percentage of members of co-operative gins, for instance, on being asked about the success of their organization will respond in terms of patronage dividends. If large dividends have been paid, the member feels that his organization has been decidedly successful; if small dividends, or no dividends at all, have been paid, the member feels that his gin has not been a success. For a given season, it is entirely possible that the gin paying no patronage dividends may have been more successful than another gin paying substantial patronage dividends. The non-dividend gin may be setting aside reserves to take care of depreciation, or may be paying off its indebtedness, or may be making improvements in machinery and equipment; the dividend gin may be paying out all its apparent net income without making any allowance for depreciation, or for writing off bad accounts, and the like. The members who view the success of their gin from the standpoint of services rendered, and profits on the investment or per bale ginned regardless of the ultimate distribution of those profits, reveal an understanding and appreciation of their co-operative that are lacking in the members who see nothing but the patronage dividend as the sole criterion of success.

Unity of Interest in Co-operation

Group action is predicated on unity of interest. Perhaps no truer or more significant statement can be made concerning co-operation than that it must be based on unity of interest of its members. That is, the members must have common interests serving as the nucleus around which to build the organization. These interests must be of an enduring nature. If these interests be fitful, here today and gone tomorrow, there would be nothing permanent to tie to. Members must agree upon their personal relations to their co-operative and to each other; they must agree upon the general objectives of their association; and finally, they must agree upon the procedure and methods by means of which

to attain those objectives. To the extent that individual interests of members are harmonious, members gain rather than lose in surrendering certain of their individual prerogatives to the group.

Too often the idea has been advanced that an agricultural co-operative represents a type of organization inherently desirable and sacred and set apart on a high ethical plane out of reach of the mundane private corporation. But the private corporation is also a case of group action—co-operation on the part of individuals who wish to put surplus funds to profitable use. It is perhaps unfortunate that the term "co-operation" with its implications of working together and sharing of benefits and responsibilities, has been applied to a particular type of organization. Much misapprehension about group action on the part of farmers might have been avoided if some neutral term in the same class as the term "corporation" had been used instead.

Benefits and Obligations of Co-operation

Co-operation attests to the validity of group action. Co-operation acknowledges the resourcefulness and ingenuity of men in attaining such ends and results through group action as might lie beyond the power and ability of men acting separately and individually.

Co-operation, like a coin, has two sides, obverse and reverse. The obverse of co-operation, the side which is the more attractive and usually receives the more emphasis, consists of the rights and benefits to be enjoyed through group action. The reverse of co-operation, the side from which there is no escape, consists of the duties, burdens and obligations to be assumed as an inevitable attribute of group action.

Co-operation—A Sharing of Duties and Responsibilities

Co-operation involves a sharing of duties, obligations and burdens inherent in group action. Members of a co-operative must share in a considerable number of duties and obligations. They must assume the responsibilities for directing the affairs of their organization; the manager and the board of directors can but act as agents in discharging the duties and responsibilities of the members. Members must furnish the capital or credit needed in establishing and in operating the business. At least some of the members must furnish the requisite leadership so essential to every successful co-operative venture; the rest of the members are under obligation to follow such leadership.

Members of a co-operative must provide the whole, or a major part of the business of their organization. Association permitting dealings with members only are entirely dependent upon the business furnished by the members. To the extent that members fail in this obligation, the life of the co-operative is placed in jeopardy.

Members must shoulder the burden of losses to the co-operative when losses occur; and they must assume the risks involved in case their business enterprise fails.

Co-operation—A Sharing of Benefits and Profits

Co-operation involves a sharing of rights, benefits, and profits through group action. The benefits which may be enjoyed through co-operation depend upon the purposes and aims of the organization and the kinds and types of problems to be solved. Sources of benefits and profits to be shared may be derived from: lowering of marketing or production costs; developing of better methods of handling commodities; returning prices to members according to quality of products delivered; improving methods of production; developing of new or more intensive markets.

In a co-operative, savings made through reduced costs; or gains made through enhanced prices; or profits derived from operating the business, are shared among members according to one of the cardinal principles recognized in this kind of enterprise, in proportion to the patronage furnished the organization.

Co-operative and Stock Corporation Contrasted

The special attributes and peculiarities of the co-operative type of business unit may best be presented by contrasting this kind of organization with the ordinary corporate type of business unit. As has been stated above, the co-operative represents group action on the part of individuals who have products to market; or who wish to buy supplies; or who are in need of certain services. The corporation represents group action on the part of individuals who have surplus funds to invest. These differences have sweeping consequences.

In the co-operative, the capital invested is of secondary importance. It is of consequence only as a necessary tool in furthering the objectives of the enterprise. The investment on the part of the member does not measure his voting power nor establish his claim to the profits of the business. In the corporation, on the other hand, the capital invested is all important. The main ob-

jective of the corporation is to earn profits to be distributed to its shareholders. The importance of the individual investor in the affairs of the corporation is measured by the number of shares that he owns, which determine both his voting power and his proportionate part of the profits of the business.

The success of a co-operative depends upon acquiring business from its members. In a sense, the relative importance of a member in his co-operative is commensurate with the business he furnishes. Logically, enough, the share of a member in the profits of his co-operative is in proportion to his patronage. The success of a corporation may in nowise depend upon whether or not the stockholders do business with their own organization. The patronage interest of the corporation is of secondary or incidental importance.

Membership in a co-operative is personal. In many instances, it is gained only through election. Membership is non-transferable. In the case of co-operatives of the capital stock type, limitations may be placed on the ownership and sale of the stock so as to give, in substance, the same degree of control over membership as is exercised in the non-stock or membership type of association. As has been stated above, the co-operative depends for its volume of business upon the patronage of its members. For this reason, great stress must of necessity be placed upon the qualification of the members. The contribution made by the members which has real significance is their patronage. This patronage must continued for the life of the organization. Members who may be fitful and unreliable in their patronage do not possess the qualifications desirable and necessary of members in a co-operative. Membership in a corporation begins and ends with the purchase and sale of its common stock. No further contribution is needed than the purchase price of the stock. Usually the corporation makes the purchase and sale of its stock as easy as possible. Only in most exceptional cases does the personal qualifications of the investor have any bearing on his eligibility to own stock.

Fundamental Principles of Co-operative Organization

The significance of the organizational set-up of a co-operative association lies in the adaptation of details to the aims and purposes of the co-operative type of business enterprise. This is the reason special co-operative laws are desirable and necessary to define the co-operative in somewhat different terms than those

which fit the private stock corporation. The provision for the paying of patronage dividends, a way of distributing profits foreign to the private stock corporation, is a recognition of the most fundamental relationship of the member to his association, that of patronage. To distribute profits among members in accordance with their contributions of capital would defeat the patronage principle.

The rigid control exercised over members on the basis of personal qualifications is merely another support of the patronage principle. To permit non-producers to become members, even under the one-man-one-vote principle, is to endanger the fundamental aims and purposes of the co-operative, that of operation for the benefit of the members contributing the business.

The one-man-one-vote principle, or in some instances in accordance with the volume of business furnished, is a recognition of the importance of the member as a person and as a patron. In the case of a co-operative, the validity of the arguments against the distribution of profits according to capital contributed is just as applicable against voting power proportionate to capital contributed.

The non-profit aspect of the co-operative type of business organization is the one principle, perhaps, the most frequently misunderstood. The distinction between the co-operative and the corporation is not the matter of the one being operated for profit and the other not for profit. The fundamental difference lies in the manner of distributing profits. The co-operative is non-profit from the standpoint of the capital invested. Herein it differs from the corporation. But the co-operative is a profit enterprise from the standpoint of the member patrons. Savings, earnings or profits are distributed through the payment of patronage dividends so as to lower the cost of ginning service in the case of the co-operative gin; or so as to increase the price to the producer in the case of the farmers' co-operative elevator; or so as to reduce the cost of commodities in the case of the co-operative selling supplies and merchandise to its members.

Application of Co-operative Principles

Co-operative principles in the abstract may be the philosopher's plaything. These principles certainly are of little importance unless they can be applied and put into successful operation. The practical application of the co-operative principles may be more difficult and involved than the act of deriving and stating

what these principles are. Plans of co-operation as expressed in by-laws and membership contracts are but bare bones, a framework, which has little significance unless covered with flesh and animated with life. Too many failures in co-operation have resulted from the explicit faith members have taken in elaborately drawn plans which they have accepted as the pattern of co-operation.

There is much more to co-operation than can be explained in words or written on paper. There is no uniform standard plan that can be applied to all products and by farmers in all sections of the country. Local circumstances and situations cannot be overlooked; the experiences and general background of farmers are a factor. Farmers in some sections of the United States take more easily and naturally to co-operation than do farmers in other sections. Nationality is significant. Persons of German and Scandanavian extraction, for instance, seem to have an inborn propensity to cooperate.

The kind of product to be handled by a co-operative marketing association, for instance, is of paramount importance. Whether a staple or a speciality; a raw product requiring processing or ready for the ultimate consumer; non-perishable or highly perishable; bulky of low unit value or concentrated of high unit value; subject to an elastic demand or an inelastic demand, are but a few considerations of vital importance in a program of co-operative marketing.

The location of the co-operative marketing association with respect to its main market outlets is very important. From the standpoint of co-operative activity, the problems of a group of producers near their principal markets are distinctly different from those of a group of producers at a great distance from their chief markets. Co-operation among producers of eggs on the Pacific Coast has taken a distinctly different form from co-operation among producers of "nearby" eggs in the East. The former group has to operate under a plan that will take care of distant shipments across the continent; the latter group has, in large part, adopted the increasingly popular local egg auction.

A co-operative should by all means pay strict attention to the experiences of other co-operatives, past and present, successful and unsuccessful. The experiences of successful co-operatives do not necessarily form a pattern that may be followed explicitly. Accomplishments of other co-operatives should be viewed rather as suggestive of methods and procedures that should be followed

than otherwise. At all times, the experiences of other co-operatives need to be interpreted in light of specific conditions and circumstances surrounding the given organization.

Every important economic and social group, to gain and maintain its proper position in relation to other groups, needs trained and constructive leadership. Co-operation may have important by-products not apparent from the standpoint of the organization as a business venture. Unquestionably, one of the significant contributions of co-operation may be realized through the opportunities offered in the training and devolpment leadership. Every successful co-operative in the United States has its corps of far-seeing, energetic and constructive leaders. In the great task of maintaining the dignity, self-respect and economic well-being of American agriculture, the co-operatives are contributing leaders who know and appreciate the needs, in their broader aspects, of farmers individually and collectively, and who can speak with such wisdom and authority as to merit serious and respectful attention.

ARCHAEOLOGICAL RESOURCES AND RESEARCH IN MISSOURI*

BY J. BREWTON BERRY
University of Missouri

Missouri is one of the most promising fields in the United States for archaeological research. Within its borders are to be found many types of ancient remains, which are able to reveal a large number of distinct civilizations, and which hold the key to not a few problems in American archaeology. This importance of the Missouri field has been recognized by many archaeologists.

Missouri derives this distinction from its natural position as a marginal area—or a border state, if you prefer. Everyone realizes the fact that today Missouri is a queer but interesting mixture of North and South, East and West, Republican and Democratic, urban and rural, industrial and agricultural, and to add interest, scattered here and there are communities displaying German, French, Italian, or Mexican characteristics. Historians tell us that this situation has prevailed ever since the arrival of the white man, and recent researches into the state's prehistory are revealing the fact that a similar condition existed long before a white man ever set foot in the territory.

With the Mississippi river as its eastern boundary, and crossed by the Missouri, this state has, moreover, witnessed innumerable migrations. Within historical times it has provided a temporary home for the Shawnee, Delaware, Miami, and many other Indian tribes. Prior to the advent of the white man we know that the Pawnee, Oto, Mandan, and Kansa, to mention only a few, spent some time within its borders. All of these temporary inhabitants of the state have left behind them house remains, village sites, and burial grounds, adding both interest and complexity to the study of Missouri prehistory.

In spite of rich archaeological resources, however, the state of Missouri has remained a relatively neglected field of study. A generation or two ago, especially during the 70's and 80's—there seems to have been a considerable interest in archaeology displayed by the state's citizens. The newspapers of the period gave quite a lot of space to the activities of amateur collectors and

*This paper was read before the Sociology Section of the Southwestern Social Science Association, Oklahoma City, April 20, 1935.

excavators. Prof. Broadhead of the state university, made some excavations and wrote a few reports on his work. His collection of mound pottery is now on display in one of the university buildings. The St. Louis Academy of Science also displayed some interest about this time, and its collection of pottery is being preserved in one of the Masonic temples in St. Louis. There were in addition a number of enthusiasts and collectors who seem to have devoted much energy to the investigation of mounds and caves. The most notable of these collections is that one assembled by Mr. Beckwith, which is now the property of the State Teachers College in Cape Girardeau.

I believe I am safe in saying, however, that these pioneers accomplished almost nothing to warrant our gratitude. So far as I have been able to learn, no records were kept of their excavations. Their work did not even approach the standards of modern archaeological methods; and their collections are of little value to the modern student, inasmuch as there is no indication as to where, when, and how the various items in the collections were obtained. They are interesting to look at and to know that they were made by Indians; but it is impossible to use them in deciphering the course of events in prehistoric Missouri.

On the other hand there have been a few worth-while projects undertaken in the state. Gerard Fowke did some work in the mounds and caves in central and southern Missouri, and his reports were published by the Bureau of American Ethnology. Fowke's work, however, is not nearly as complete and accurate as we should like to have it. Several of the annual reports of the Bureau of Ethnology contain reports that are of some value to the modern historian. Some thirty years ago, Louis Houck, in preparing his history of Missouri, sent out two men to map the Indian mounds of the state. These indefatigable assistants turned in a total of approximately 30,000 mounds, each one located by township, section and range. I have visited a great many of the sites they reported and I am convinced that they included railroad embankments and every other kind of earthly eminence; but they did include Indian mounds also, and their work will prove, and is proving to be of value. Then there have been two hasty and rather superficial expeditions into Jacob's Cavern, in southwestern Missouri, the results of one being published by Phillips Academy and the other by the American Museum of Natural History. Finally there is a little work of value by M. R. Harrington and D. I. Bushnell, Jr.

The Missouri situation is particularly depressing when we consider what is being done or has been done in other states. American archaeology has been making tremendous strides in New Mexico, Arizona, Ohio, New York, and Michigan; and Missouri is almost entirely surrounded by states in which archaeological activity has been carried forward remarkably within recent years. Kansas, unfortunately, has done even less than Missouri, but in Illinois, Iowa, Kentucky, Tennessee, Arkansas, and Nebraska archaeologists have been making rapid progress. Ten years ago Iowa was as unknown archaeologically as Missouri is today, but one decade of hard work has resulted in the accumulation of much information about prehistoric Iowans.

Two years ago Prof. J. E. Wernch and I became interested in the problems of Missouri Archaeology. The first step to be taken was that of surveying the state's resources, and we began with little financial support, we have succeeded to date in gathering a quantity of fairly reliable data, showing the location of approximately 13,000 mounds, 1,000 village sites or camp sites, 300 cemeteries, 100 inhabited caves, and other miscellaneous remains of the Indian. We have also been conducting a rather thorough piece of library research. Much information on Missouri Indians may be obtained from old maps, and from the journals and reports of early missionaries and explorers. We have been combing and sifting as much of this material as is available.

One of the most encouraging achievements to date, however, has been the formation of a Missouri Archaeological Society. In the few short months of its existence the membership has grown amazingly and a spring conference held in Columbia was largely attended by members and interested citizens. The society is bringing together people who are interested in prehistoric Missouri, it is directing their activities into the most fruitful channels, and it will serve as a co-ordinating agency for the archaeological activity in the state. Amateurs can be very helpful to the scientific archaeologist, and the Society is providing the amateur with opportunities to make his work count for the most.

With such information as we have been able to gather together, therefore, we are beginning to clear up some of the mystery about the people and civilizations that flourished in Missouri before the coming of the white man. We are beginning to suspect, for instance, that man has been living in the state for thousands of years. One of the most thorough and systematic efforts to determine the antiquity of man in Missouri comes to the con-

clusion that 16,000 years before Christ men were living in the above mentioned Jacob's Cavern. This conclusion, of course, is by no means established; but it is as least one indication pointing to a long period of human occupation.

When the white man first began coming to this region there were two powerful tribes living here. Roughly, the Missouri Indians were living in the northern half of the state and the Osages in the southern. These tribes were distantly related, both belonging to the great Siouan family. It appears that there were four great westward migrations of the Siouan peoples. One of these brought the Osages to the state; the other was the migration of a group which divided into the Winnebago, Oto, Iowa and Missouri. When white explorers first descended the Mississippi river in the latter part of the seventeenth century, they reported the Osages living along the river that bears their name, and the Missouri inhabiting a large village near the mouth of the Grand River. Even in that remote period, Missouri was a border state, and we find reflected in these two tribes both the culture of the nomadic buffalo hunter of the hunters of the plains and that of the more sedentary woodland tribes of the east and south.

Long before the Missouri and Osage tribes moved into the region, however, there were people living here, and while we do not know much about them, information is beginning to accumulate.

In the southwestern corner of the state, possibly 2,000 years ago, there lived a people whom we call the Ozark Bluff Dwellers, for they inhabited the sheltering bluffs along the rivers. They were people of medium height, with long heads. They depended upon agriculture for about fifty per cent of their maintenance. They raised corn, beans, gourds, squash, and sunflowers. The seeds were ground on flat mortars. During most of their residence in the state they did not know how to make pottery; but pottery made its appearance toward the end, and in the upper strata of their homes broken pieces are found. In addition to their agriculture, they collected various roots, seeds, and nuts. These are found in bags and baskets near the back of their caves.

Among the remains found are darts, fish hooks, nets and fish baskets, snares and traps, needles, bags and baskets. They ate turkey, deer, rabbits, and fish. They ate their meals from wooden bowls, or terrapin shells, and used mussel shells for spoons. In their ceremonies they used rattles and cane flutes. They buried their dead in bags of feather cloth or deer hide. They knew noth-

ing of tobacco or of the bow and arrow. These articles, which we usually imagine to be almost synonymous with the Indian, had not yet reached them.

Missouri has also been the home of the mound buliders. In the southeastern corner of the state there once lived a people whose civilization doubtless surpassed that of any of the state's prehistoric inhabitants. This area of high culture apparently had its center near the present site of Memphis, Tennessee, and it extended over portions of Arkansas, Kentucky, Tennessee, Missouri, Illinois, and other states. These people erected earthen mounds of surprising proportions. The largest mound in Missouri is found in this area. It measures 400 ft. by 250 ft. and is about 50 ft. high. These people, too, were the most accomplished manufacturers of pottery. Their bowls and water bottles were not the primitive, crude and undecorated objects of other Missouri Indians, but were beautifully molded, artistic in design, elaborately decorated even to the use of colors. They even modeled in clay both human figures and those of birds and animals. No doubt, a large, highly civilized, sedentary, agricultural people at one time lived in southeastern Missouri.

Across the central part of the state there once lived a different group of mound builders. These people built smaller mounds which, with few exceptions, were used for burial purposes. These were the "stone vault people," so-called, because they made crude vaults of flat stones, in which they deposited their dead and over which they piled mounds of earth. In culture they were quite inferior to the mound builders of the southeast.

Space will not permit a description of many other peoples that we have evidence for believing once inhabited the state. Throughout the south central region we find hundreds of mounds of still a different type. Some insist that these are natural and not artificial mounds; while others report that they have found in them evidences of man's work. They have been thought to be the remains of the Pawnees who once crossed the state, and during their period of residence built earth-covered lodges which have collapsed, forming the mounds. Others refer to them as "garden mounds" while still others insist that they were used as the foundation for wigwams. Here is a problem which a series of careful excavations should clear up.

It is my belief that as investigations continue we shall find evidences of still other peoples in the state. I am convinced that

the famous Hopewell culture, with its center in Ohio, and which has recently been found to have reached Illinois and Iowa, will be found in Missouri. I begin to wonder, also, whether or not the builders of the "effigy mounds" with their center in Wisconsin, did not diffuse their culture into Missouri. We occasionally receive reports of effigy mounds in the state, but I have not been satisfied with any I have visited.

There is sufficient evidence in this summary to show that Missouri is a state wealthy in archaeological resources, abounding in important and interesting problems, and deserving far more scientific research along these lines than has hitherto been done.

TREATY VERSUS STATUTE

A NOTE ON COOK V. UNITED STATES*

BY C. GORDON POST

Vassar College

It is a generally accepted rule of constitutional law that when treaty and statute, both comprising the supreme law of the land, inconsistently relate to the same subject, the one later in date will control.[1] This rule was tersely stated by Mr. Justice Harlan in *Hijo v. United States:*[2] "it is well settled that in case of a conflict between an act of Congress and a treaty—each being equally the supreme law of the land—the one last in date must prevail in the courts."[3] Of course, treaties are not to be lightly cast aside even by acts of Congress; in point of fact, "it is the duty of the courts not to construe an act of Congress as modifying or annulling a treaty made with another nation, unless its words clearly and plainly point to such construction."[4] Mrs. Gue Lim, maintained that "if can be reasonably be done" an act of Congress should be so construed "as to further the execution and not to violate the provisions of the treaty."[5] Likewise, there would seem to be an unwillingness on the part of the Supreme Court to construe a treaty as nullifying a previous act of Congress. A statute "if not repugnant to the Constitution . . . is made by that instrument a part of the supreme law of the land, and should never be held to be displaced by a treaty, subsequently concluded, unless it is impossible for both to stand together and be enforced.[6]

---

*288 U. S. 102.

[1]See the *Cherokee Tobacco*, 11 Wall. 616; the *Head Money Cases*, 112 U. S. 580; *Whitney v. Robertson*, 124 U. S. 190; *Chae Chan Ping v. United States*, 130 U. S. 581; *Fong Yue Ting v. United States*, 149 U. S. 698; *United States v. Lee Yen Tai*, 185 U. S. 213; *Hijo v. United States*, 194 U. S. 315; *Rainey v. United States*, 232 U. S. 310. The writer, in this paper, is concerned with self-executory treaties only. "It has, from the beginning, been held that treaties, so far as they are self-executory, operate in the United States . . . to create municipal law which the courts are called upon to recognize and apply." Westel W. Willoughby, *The Constitutional Law of the United States*, (2nd Ed.), I, 548.

[2]194 U. S. 315.

[3]*Ibid.*, 324.

[4]*Lem Moon Sing v. United States*, 158 U. S. 538, 549.

[5]176 U. S. 459, 465.

[6]*United States v. Lee Yen Tai*, 185 U. S. 213, 222.

Now, a consideration of the recent case of *Cook v. United States*[7] will, perhaps, lead to the conclusion that the general rule, so briefly outlined above, must be, to some extent, revised. This case concerned a British vessel, the *Mazel Tov,* capable of a speed of less than ten miles an hour, which on November 1, 1930, was discovered by a coast guard cutter within four leagues of the Massachusetts coast. The *Mazel Tov,* carrying unmanifested intoxicating liquors, was boarded at a point eleven and one-half miles from the neaerst shore. The vessel was seized, taken to Providence, R. I., and there turned over to the customs officials. The Government of the United States by means of libels against both ship and cargo proceeded in the federal district court to collect an assessed penalty of $14,286.18 for failure on the part of Cook, the master of the *Mazel Tov,* to include the liquor in the manifest.

The district court dismissed the libels; the Circuit Court of Appeals reversed the judgment of the lower court. Certiorari was then granted by the Supreme Court of the United States.

The chief issue of the case was whether section 581 of the Tariff Act of 1930[8] was modified, as applied to British vessels suspected of smuggling liquors into the United States, by the Treaty of May 22, 1924[9] between Great Britain and the United States. The former was a re-enactment, in identical language, of section 581 of the Tariff Act of 1922,[10] and declared that "Officers of the customs or of the Coast Guard, and agents or other persons authorized by the Secretary of the Treasury, or appointed for that purpose in writing by a collector may at any time go on board of any vessel... within four leagues of the coast of the United States ... to examine the manifest and to inspect, search, and examine the vessel ... and to this end to hail and stop such vessel ... if under way, and use all necessary force to compel compliance, and if it shall appear that any breach or violation of the laws of the United States had been committed ... it shall be the duty of such officer to make seizure of the same, and to arrest, or, in case of escape or attempted escape, to pursue and arrest any person engaged in such breach or violation."[11] The treaty, on the other hand, provided first of all that both parties would "uphold the principle that 3 marine miles extending from the coast-line outwards and meas-

[7] 288 U. S. 102.
[8] 46 *Stat. L.* 590, 747.
[9] 43 *Stat. L.* 1761.
[10] 42 *Stat. L.* 858, 979.
[11] *Ibid.,* 979.

ured from low-water mark constitute the proper limits of territorial waters."[12] The instrument provided, secondly, that "His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States . . . in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcholic beverages into the United States . . . When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted."[13] The treaty futrher declared that "the rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense."[14]

The Treaty of 1924, said Mr. Justice Brandeis, "being later in date than the act of 1922, superseded, so far as inconsistent with the terms of the Act, the authority which had been conferred by section 581 upon officers of the Coast Guard to board and seize vessels beyond our territorial waters."[15] Here the treaty abrogated section 581 of the Act of 1922; but the re-enactment of section 581 in the Tariff Act of 1930 did not serve to abrogate any portion of the treaty. "A treaty" Mr. Justice Brandeis explained, "will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed. Here the contrary appears. The committee reports and the debates upon the Act of 1930, like the re-enacted section itself, make no reference to the Treaty of 1924 . . . Searches and seizures in the enforcement of the laws prohibiting alcoholic liquors are governed, since the 1930 Act, as they were before, by the provisions of the Treaty. Section 581, with its scope narrowed by the Treaty, remained in force after its re-enactment in the Act of 1930."[16] The Court held, consequently,

[12] 43 *Stat. L.* 1761.

[13] *Ibid.*, 1761-1762.

[14] *Ibid.*, 1762.

[15] 288 U. S. 118-119.

[16] Ibid. 120. Mr. Justice Brandeis continued: "The section continued to apply to the boarding, search and seizure of all vessels of all countries with which we had no relevant treaties. It continued also, in the enforcement of our customs laws not related to the prohibition of alcoholic liquors, to govern the boarding of vessels of those countries with which we had entered into treaties like that with Great Britain."

that the *Mazel Tov* was seized without warrant since the Government lacked power to seize the vessel by virtue of the fact the treaty imposed a territorial limitation upon its own authority. The decree of the circuit court was, therefore, reversed.

There are several aspects of this case that deserve our attention. Obviously, there was an inconsistency between the treaty and the Act of 1930 as to the extent of jurisdiction over the marginal seas; otherwise, the treaty would not have superseded the Act of 1922. The treaty allowed jurisdiction to a distance that "can be traversed in one hour by the vessel suspected of endeavoring to commit the offense."[17] The Act of 1930 extended the jurisdiction of the United States four leagues from the coast. In relation to each other and to the same subject, it was impossible for both treaty and statute "to stand to-gether and be enforced."[18]

To understand properly the situation as it presented itself to the Court it is necessary to consider the history of the Treaty of 1924. There is in the discussion of Mr. Justice Brandeis on this subject a notable emphasis on the difficulties that had arisen between Great Britain and the United States over the question of liquor regulation. Following January 16, 1920, ships of British registry were discovered smuggling intoxicating liquors into the United States. These vessels were boarded and seized by the Coast Guard outside the three-mile limit and Congress sought to sanction such action in the Tariff Act of 1922. The British Government protested against the seizure of any British vessel outside the three-mile limit and maintained that "insistence upon the practice would be regarded as creating 'a very serious situation.' "[19] To meet British objections, the Secretary of State proposed, June 26, 1922, that a treaty be entered into "under which the authorities of each nation would be authorized to exercise beyond the three-mile limit of territorial waters a measure of control over vessels belonging to the other."[20]

The decision of the Supreme Court on April 30, 1923, in the case of the *Cunard Steamship Company v. Mellon*[21] further ag-

[17] 43 *Stat. L.* 1762.

[18] *United States v. Lee Yen Tai*, 185 U. S. 222.

[19] 288 U. S. 115. The British Chargé d'Affaires *ad interim* to the Secretary of State, July 10, 1923. Dep't. of State Press Release, February 16, 1927. See William E. Masterson, *Jurisdiction in Marginal Seas*, 356. "In view of the historic practice of nations, it is submitted that the seizures of smuggling vessels made by the United States under her hovering laws were not inconsistent with any existing principle of International Law."

[20] 288 U. S. 115-116.

[21] 262 U. S. 100.

gravated the situation and led to a resumption of negotiations between the two countries. Under the National Prohibition Act, the Court held the foreign vessels were not permitted to bring intoxicating beverages into the United States or its territorial waters even if they were secured under seal, either as sea-stores or cargo.

The secretary of State, on June 11, 1923, submitted the draft of a treaty to Great Britain the purpose of which was to remove the element of friction between the two governments. This draft was rejected by Great Britain because it was regarded as extending the limits of the territorial waters of the United States. Negotiations continued, however, until finally a counter-proposal was submitted by the British Government. The British counter-proposal upheld the three-mile limit, made no reference to a twelve mile zone, and was to apply only to intoxicating liquors. "Each country" said Mr. Justice Brandeis, "was to secure the immunity required to satisfy its peculiar need."[22] The need of the United States would be met in the provision that Great Britain would not protest to boarding a vessel, suspected of smuggling, outside of territorial waters at no greater distance than could be traversed in one hour by that vessel. The need of Great Britain was to be met by permitting British vessels "voyaging to or from the ports or passing through the waters of the United States to have on board alcholic liquors listed as sea stores or as cargo destined for a foreign port, provided that such liquor is kept under seal while within the jurisdiction of the United States."[23] This draft, with few verbal changes, was finally accepted.

There is in the discussion of the history of the treaty by Mr. Justice Brandeis, a note to the effect that difficulties existing between the two countries over the question of jurisdiction found a fair solution in the Treaty of 1924.[24] And the problem with which the Court found itself faced was whether a treaty, of six years duration and successful in its operation,[25] should be overthrown by

[22]288 U. S. 118.

[23]*Ibid., passim.*

[24]See Philip C. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction*, 279-289.

[25]See Masterson, *op. cit.*, 358-359. It is obvious that the writer is not concerned alone with the "law" involved in this case. He is interested primarily in the question of the conditions or consequences the Court wished to perpetuate or realize. See Munroe Smith, *Jurisprudence*, 21: "—if the accepted rule which seems applicable yields a result which is felt to be unjust, the rule is reconsidered." The present writer, however, would prefer to substitute the word "inexpedient" for "unjust."

a subsequent act of Congress, nullifying the treaty, and reviving the very thorny situation the treaty had largely rendered negligible. It does not seem unreasonable to assert that the Court was desirous of avoiding such consequences. The Court favored the Treaty of 1924 in order to avoid what it deemed to be undesirable consequences. It does not seem unreasonable, therefore, to aver that *if the Court favors a treaty*, that treaty may not be overridden by a subsequent statute even though the two are inconsistent.

A second aspect of interest in this case is the indication of a reversal of the general rule of the relationship of treaty and statute. A treaty modifying an earlier statute may be held to modify, also, a subsquent statute cast in the identical language of the earlier act. Section 581 of the Act of 1930 was identical with section 581 of the Act of 1922. The Treaty of 1924 modified the latter; and it was assumed by the Court that when the Congress included section 581 of the 1922 Act in the 1930 Act, the modification established by the treaty was carried with it.

A third point of interest here is that in order to abrogate or modify a treaty by statute, such abrogation or modification must be "clearly expressed."[26] The debates on the Act of 1930 and the committee reports were searched by the Court for some indication of a clear expression of intention, but the debates and reports, like section 581 itself, made no reference to the Treaty of 1924. Therefore, it was not the intention of the Congress to nullify the treaty. This raises the question of the Court's criterion in determing the reconcilability, or irreconcilability, of treaty and statute. In Ropes v. Clinch[27] it was held that a statute inconsistent with an earlier treaty was sufficient to void the prior agreement. The power, said Justice Woodruff, "to go behind the terms of an enactment, and inquire whether Congress intended that it should have effect necessarily produced by its due execution, I am compelled to disclaim,"[28] The rule expressed here, however, is no longer valid. It was held in the later case of In re Ross[29] that before giving effect to either treaty or statute the court should discover the intention of the Congress in making the law and of the parties in entering into the treaty. This doctrine was reiterated in Cook v. United States. But, it must be remembered that it is the Supreme Court which determines finally whether the intention of the statute has been "clearly expressed."

[26] 288 U. S. 120
[27] 8 Blatchford, 304.
[28] *Ibid.*, 313.
[29] 140 U. S. 453.

In the light of the opinion in this case, it would seem that the Supreme Court denies the equality of treaty and statute, both, supposedly, the supreme law of the land. Equality cannot exist if the abrogation of a treaty must be "clearly expressed" or clearly intimated by the Congress; while a self-executory treaty may become the law of the land, overriding a statute, without the necessity of such expression or intimation. "A treaty, assuming it to be made conformably to the Constitution in substance and form, has the legal effect of repealing, under the general conditions of the legal doctrine that '*leges posteriores priores contrarias abrogant*,' all pre-existing Federal law in conflict with it, whether unwritten, as law of nations, of admiralty, and common law, or written, as acts of Congress."[30] Furthermore, a treaty abrogates all state laws inconsistent with it.[31] It would be virtually impossible, in the legal sense, for the courts to declare a treaty, inconsistent with an earlier statute, to no effect simply because there was no "clear expression" that the parties intended to nullify the statute. A treaty is a political act of the political departments of the government of the United States and as such must be accepted by the courts.[32] It would seem, however, that a statute, subsequent, contrary, to a treaty, requires no such acceptance. "The effect of ratification by the parties" says Oppenheim, "is to make a treaty binding."[33] The effect of the treaty upon the contracting states, he continues, "is that they are bound by its stipulations, and that they must execute it in all its parts. No distinction should be made between more and less important parts of a treaty as regards its execution. Whatever may be the importance or the insignificance of a part of a treaty, it must be executed in good faith, for the binding force of a treaty covers all its parts and stipulations equally."[34] Furthermore, "a treaty which does not require legislation to make it operative will be executed by the courts from the time of its proclamation."[35] After a treaty has been negotiated, ratified by the contracting parties, and proclaimed by the president, would it be within the province of the courts to declare that because the negotiators did not clearly express their intention to override an earlier and inconsistent stat-

[30]John Bassett Moore, *Digest of International Law*, V, 370.

[31]*Ibid.*, 371

[32]Self-executory treaties, of course, are referred to here. However, there 590.

[33]L. Oppenheim, *International Law*, (3rd Ed.), I, 676.

[34]*Ibid.*, 677.

[35]Moore, *op. cit.*, V, 246. See also *Foster V. Neilson*, 2 Pet. 314; *United States v. Arredondo*, 6 Pet. 725.

ute, the treaty was, in so far as it contravened the statute, ineffectual? Yet, a statute, subsquent to, and inconsistent with, an earlier treaty must, in the light of Cook v. United States, declare, in one way or another, the intention to override the treaty. This, in essence, deprives treaty and statute of the equality by the Constitution.

The purpose of the writer in this brief paper has not been to condemn the decision of the Supreme Court in the *Mazel Tov* case; its purpose has been rather to indicate the changing relationship of treaty and statute in the American constitutional system. As a matter of fact, the principle of interpretation contained in the opinion rendered by Mr. Justice Brandeis, if followed by the court in the future, may be instrumental in the maintainence of international obligations through the media of our national courts; but this question has received no consideration here.

THE INACTIVE ELECTORATE AND SOCIAL REVOLUTION

BY FRANCIS G. WILSON
University of Washington

If, with Horace, one must accept as final that "the short span of life forbids us to cherish long hopes," it may be that the permaanence of non-voting in our democratic societies must be recognized as part of the general liquidation of more generous hopes for the sovereignty of the people. The expansion of the electorated during the nineteenth-century progress of democracy was certain to bring about the continuous fact of political abstention in the modern state. Democratic thinkers have taken various attitudes on this upsetting circumstance, but no means has been discovered whereby the total body of the electorate can be brought to participate habitually in elections, much less to assure that such activity shall be intelligent and instructed on the issues before the voters. The overwhelming practical and theoretical objections to compulsory voting laws have prevented the general adoption of this solution. On the other hand, there is a wide-spread but sporadic and ineffective effort to persuade the vetors to register and visit the polling places on election days. "Civic spirit" has not solved by any means the annoying fact of a large percentage of the electorate being habitually inactive.[1]

While the conceptions suggested above are involved in the liberal interpretation of the state and society, they are connected likewise with the idea of popular sovereignty, and the free expression of freely formed individual opinion. Most fundamental of all is the principle that man as a rational being has a right to and is worthy of freedom. In the world in which we live today, however, a new aspect of the problem of non-voting has been presented by the development of the authoritarian and anti-liberal view of the political process. There has been no specific elimination of voters as might be practiced by the realization of older, aristocratic and feudal theories of the state, though instead there has been developed a definite effort to limit or destroy the effectiveness and function of the ballot as it has been thought of in democratic com-

[1]The distinction involved here is between the active electorate, i.e., those who habitually vote, and the inactive electorate, i.e., those who habitually do not. In a sense, this is a continuation of the French revolutionary distinction between active and passive citizenship.

munities. A new structure of the political party has been developed, the single-party system, and there has been a conscious rejection of the principles of majority rule and popular sovereignty. The voter in the authoritarian state faces a widely different situation than does the elector in the democratic and liberal scheme of politics. The separation of the party from the conception of political "opposition" and the establishment of the "world-view" movements has, in effect, established the party as a definite part of the state and given it a public law status which is fundamentally in the disagreement with older notions.[2]

These developments are in accordance with *The Revolt of the Masses*, as José Ortega y Gasset has phrased it. We are the witnesses of a general denial of the historic and cultural forms of authority, and of a repudiation of the intellect and science. Ortega regards the masses as indocile and unwilling to accept any authority outside of the arrogant individualism of the primitive mass-man.[3] Spengler, on other hand, believes we are to enter a period of technicism which is a phase of the decline of the West. It is a period of Caesarism and the age of the modern tyrants. To Ortega, however, this authority cannot endure, and there will be no technicism if the appreciation of science is undermined.[4] The vote in such a period of authoritarianism as has been generally predicted will be subjected to all forms and mechanisms of control, which will be in sharp contrast to the liberal ideal of free opinion.[5] We may even reach, according to one satirical suggestion, a time in which propaganda will be aided by the glandular control of our emotions.

[2]C. E. Merriam, *The Making of Citizens* (Chicago, 1931), p. 109, suggests that the new notion of the party is not that of the "party" at all. The party in its new relation is a governmental organ and has imposed upon it functions which are inconsistent with traditional views. He remarks: "In Russia and Italy new forms of political organization have been developed in place of the political party. These are the Communist Party and the Fascisti, both of which carry on functions different from those of political parties."

Otto Koellreutter, *Grundriss der Allgemeinen Staatslehre* (Tubingen, 1933), p. 166, says: "Die Parti ist im Einparteistaat somit der einzige Träger und Gestalter des Staates. Sie verkörpert nach der politischen Anschauung des Nationalsozialismus und Faschismus die Nation und wird deshalb auch vom Verfassungsrecht offiziel anerkannt."

[3]*The Revolt of the Masses*, tr. from the Spanish, (New York, 1932), pp. 65, 68, 90-91.

[4]*Ibid.*, pp. 90-91. See Oswald Spengler, *The Decline of the West*, tr. from the German, (New York, 1928), Vol. II, pp. 386ff; *Man and Technics*, tr. from the German, (New York, 1932), *passim*.

[5]See Wyndham Lewis, *The Art of Being Ruled* (New York and London, 1926), pp. 37, 47, 55, 62.

It is natural, therefore, that other devices than the ballot should emerge as means of expressing the feeling of the members of the nation.[6]

There are two distinct ways of regarding the fact of voluntary non-participation in politics. We may take the point of view of a stable and progressive democracy. As a pragmatic fact, non-voting continues to be a normal facet of the democratic process. In an age of well-organized constitutionalism there is reason for political abstention, since the values which motivate political conduct are secured under the organization of the limited, liberal state. The ballot is a form of protest which may be used as occasion demands in order to enforce a somewhat negative yet effective responsibility upon those who are the elected representatives of the people. A realistic view of the behavior of democracies leads one toward the belief that there is no danger in the continual absence of a large number of the legally established electorate from the voting booth. When men have what they want from the political order, there is insufficient excitement in campaigns to draw all of them to the ballot box on election day.[7]

Our attention today, however, is constantly being drawn to the abnormal, to the political instability of our times, and to the emergence of new forms of social leadership and organization. That voting has continued in fact to be an important phase of political life under the alternative form provides the starting point of an examination of the problem of non-voting in times of stress and the reorganization of government. What strikes the eye first of all in the study of the early stages of the authoritarian state is the tremendous increase in voting, and the progressive diminution of the number of legal voters who stay away from the polls. All kinds of pressures may be adopted, as in Germany, to compel the citizen to vote, but above all this there remains the fact that political passion decimates the complacency of the inactive electorate. Moreover, in the second place, we must remember that the utopian mass movements of the present age use the ballot only as a part of

---

[6]Spengler, *The Decline of the West*, Vol. II, p. 416 notes that when the imaginative power of parliamentarism has gone, unparliamentary methods will take its place, such as money, economic pressure, and the strike. He also speaks of the rise of "a vote-apathy" even in gerat crises when the oligarchical structure of parties has reached its height. *Ibid., p.* 456.

[7]See my paper "The Pragmatic Electorate," *The American Political Science Review*, Vol. XXIV (1930), pp. 16-37, for a full discussion of this point of view; see also the author's sketch on "Independent Voting" in the *Encyclopaedia of the Social Sciences.*

the general technique of attaining politcal ends.[8] The mass moves toward violence; direct action in a thousand different details comes to its own, even though the ballot may remain as a kind of elusive but primary symbol of the authoritarian democracy of the present-day Europe.

Professor Alvin Johnson once remarked that the approach of the revolution is heralded by the rise in political participation and the diminution of the number of non-voters. In a society in which only fifty per cent. of the electorate participates, it is clear that politics does satisfy in a way the desires of the mass of individuals in the state. As the percentage of participation rises above, let us say, ninety per cent. it is apparent that the tensions of political struggle are stretching to the breaking point the will toward the constitutional. Order itself is at stake, and it must be noted also that post-war Europe indicates that the rise in the number of those voting is accompanied with an increase in direct action and political violence, though it may not actually attain a stage of true civil war. Government by the few voters who make an appearance on election day may be corrupt, it may be the very foundation of the continuance of the old party oligarchy, but at least it is certain that the political waste is less than the mass of the people will stand. In other words, the increase in voting is merely a phase of the transitional stage to the open use of violence, the "Magna Charta of barbarism."[9]

From another point of view, many of those who stress mass participation in politics have, perhaps by intuition and a general sense of the proprieties of their own situation, favored the use of violence. The proletarian movement as long as it is truly mass-led is almost certain to be revolutionary rather than parliamentary in

[8]See H. F. Gosnell, *Why Europe Votes* (Chicago, 1930), pp. 188ff, for observations on the more rich development of party technique in certain European situations. It may be suggested, however, that the intensity of social and political issues produces many party techniques which may have a value only under such circumstances. Gosnell recognizes that an increase in the blood-pressure of political conflict brings about an increase in participation.

[9]Ortega y Gasset, *op. cit.*, p. 82. The sharp increase in the percentage of those voting in Germany before the rise of the National Socialists to power in 1933 is a very pertinent demonstration of this fact. But it should be noted that violence and constant sublimated civil war accompanied the almost perfect participation of the German electorate in the large number of elections during the last few years before Herr Hitler became Chancellor. Luigi Villari, *The Fascist Experiment* (London, 1926), p. 63, declares that in the Italian elections of 1924 there was an increase in participation from fifty-five to seventy-three per cent.

its spirit. To an exponent of syndicalist violence, such as Georges Sorel, the increase in functioning violence means a diminution in the interest in electoral participation.[10] This may be true of a militant and well-organized workers' movement which has at the same time a definitely anti-political and anti-intellectual ideology. However, for the mass of individuals who are part of a well-established proletarian or bourgeois "religion," all means of participation are likely to be seized upon in order to enforce the incoherent demands which well up from the poorly outlined rage of the disadvantaged.

The communist has observed the fact that mass movements with a passion for sustained participation in political agitation are likely to result in the repudiation of preletarianism and the rise of what he generically calls "fascism"—that last desperate attempt by the bourgeoisie to stave off the revolution. The critical moment in the life of a class brings out the indifferent and non-participating members of the group. When the consciousness of life and death struggle has seeped into the average mind, the customary lethargy no longer has a place. Active and militant steps must be taken. The traditional forms of life must be preserved, and the leader who rises at this junction and promises to put down the enemy will receive an enthusiastic following. The passive middle classes, the petty bourgeoisie, come out to vote again and again—for authority.[11] Such rationalization on the part of the communist does explain after a fashion why the class conscious proletariat has been overwhelmed and the promised revolutionary era postponed indefinitely into the shadowy future.

It has been noted that the National Socialist movement brought into activity the indifferent voters, those who had believed that their order of the world would endure without any active support. It was this support which was the primary factor, along with the mistakes and under-estimations of its enemies, which assured the triumph of the National Socialist *Bewegung*. To vote is to protest furiously against the enemies of the movement. Most critics doubt whether any vote is purely rational, at least in the onslaught of Graham Wallas in *Human Nature in Politics* (which must be a part of the creed of a modern Machiavelli). The emotional and

---

[10] *Reflections on Violence*, tr. from the French, (London, 1914), p. 75.

[11] See R. P. Dutt, *Fascism and Social Revolution* (New York, 1934), p. 119. H. J. Laski, *The State in Theory and Practice* (New York, 1935), p. 286, suggests, on the other hand, that hatred among the few and apathy among the many is the direct path to counter-revolution.

distraught participation which one witnesses when over ninety per cent. of the legal electors march to the polls time and again must be even less rational than the higher critics of democracy have been wont to describe.[12] During the last few years, all passivity and repose has been drained from the German political struggle. The masses were, no doubt, participants either because they wanted repose or because they were conscious fighters for the new *Reich*. In substance, however, this passionate participation is a rebellion against politics itself. The indifferent voter came out to vote for authority and against politics. He acted primarily to end politics, very much as we once acted militaristically in a war to end war which resulted in a peace to end peace.[13]

It must be agreed therefore that the ballot is a mass weapon, though serious question may be raised as to its present effectiveness. This query may come from either the Marxian or the liberal side. What we have seen above is that the elimination of non-voting may mean in fact voting against "the blessings of political discord."[14] The communist views the whole contemporary development in the light of an increase in the intensity of the class conflict. When the class war reaches an advanced stage, the stage tends to become stronger and, indeed, authoritarian, declared Engels. The executive emerges from its hibernation of peaceful and stable constitutionalism to assume the helm of state.[15] As a part of this general point of view, however, Lenin held that under capitalistic democracy, the wage-earner is, like the slave of the ancient city-state, excluded from participation. Being occupied with his overburdening tasks, he is likewise little interested in politics. The communist seeks to draw the worker into the creative violence of the class struggle, and as a matter of party tactics he may be urged to vote, along with other means of expressing his conception of the kind of society that ought to be.[16] The vote is merely a means, but the good party adherent must vote when the proper candidate is on the ballot. Voting itself is not a primary weapon; it is merely

---

[12]See in general E. M. Sait, *Democracy* (New York, 1929).

[13]Konrad Heiden, *Histoire du national socialisme, tr.* from the German, (Paris, 1934), pp. 272ff, 277.

[14]See G. C. Lewis, *A Dialogue on the Best Form of Government* (London, 1863), p. 43.

[15]Cited in N. Lenin, *The State and Revolution* (London, 1919), pp. 14-15, 37.

[16]*Ibid.*, p. 89. It is safe to say that when the Communist Party offers candidates, its members and sympathizers participate in a much greater percentage than is customary among the supporters of constitutional parties.

a phase in the strategy of the class struggle. In the communistic society, the right to vote is widely granted on the basis of occupational affiliation or productiveness, though the guiding principles of justice are derived from historical science and stand above the abortive doctrine of "what the public wants."[17]

Turning to the other side, we observe an equally paradoxical situation. In the "leader state" (Führerstaat) there is a rejection of both majority rule and the primary principle of voting. The national *Rechtsstaat* will have none of these. As the leader state rejects the idea of popular sovereignty, so it sees the highest and most effective expression of the political principle in the leaders who direct the course of policy. Leadership is the institution which can best manifest the unity of authority, but authority in turn is based on the community (*Gemeinschaft*). Authority springs directly out of the existence of the community. When the community is based on its natural foundations, a folk in a definite territorial area which has been woven into the historic destiny of the folk (*Volk und Boden*), we have a nation. A nation is not an artificial construction of the state or the makers of peace treaties; it is an expression of folk spirit and unity, which is given outlet in race, culture and the mother speech. There are, however, certain values involved in the very conception of the folk. These are not to be given expression in terms of fortuitous majorities or in the struggle of political parties, but in the leadership which can bring about an organic unity between the folk and the state. Power is a servant of the folk;and the leader is, in the spirit of Frederick the Great, the first servant of the race.

It is natural under these assumptions that the vote should be regarded as more artificial and less necessary in the determination of broad issues than in the liberal doctrines of political society. A party becomes an element in the state which is the historic carrier of the folk spirit; the party contains in its objectives a *Weltanschauung*, a totalitarian attitude which is impossible to achieve in the fragmentary conception of the party in the liberal pseudo-democracy. Participation in political life comes only through adherence or support of the party which is the most adequate guarantor of the

[17]It is hardly necessary to enter into a long debate as to whether Russia is democratic or autocratic. The primary role of the party leaders tends to confirm the suspicion of despotism, while the right to vote on a wide scale suggests democracy. See in general *International Conciliation* No. 305, December, 1934. "The political and Social Doctrine of Communism." In this pamphlet Professor Sidney Hook questions the democracy of contemporary Russia.

folk values at the basis of community existence. The vote is important only as it maintains the logically necessary totalitarian attitude. Outside the party there is no real political life.[18]

Obviously, the leader state does not require the constant participation of the individual in politics, nor does it need for its organic existence the partial and chaotic system of political representation which has been characteristic of liberal democracy. Non-voting is, in theory, perfectly plausible once the proper leadership has been established, though occasional elections or plebiscites may be required for the enforcement of the fundamental principle of the complete responsibility of the leader, a characteristic of Germanic democracy as taught by National Socialism. On the other hand, it is clear that present German policy favors a complete participation of the electorate in an election whenever it occurs. Assuming the German people are fairly well contented with the policy of the government, experience might teach that such a high percentage of voting cannot be maintained. The perfect participation of the pre-Hitler days can be maintained, short of open coercion, only by the continuation of a state of revolutionary tension. The disappearance of non-voting during the critical days before the establishment of the present regime was, as we have suggested, the use of political means to end politics. The habitual non-voter will not have his habits changed by a passionate political interest that cannot be sustained.

Authoritarianism can accept the non-voter in so far as this is a rejection of the liberal and democratic ideology, though in so far as the new folk state demands the adherence of the citizen in an objective way, the vote may be a fair indication of the existence of the folk mind. Nevertheless, there has been in romanticism, of which the National Socialist movement must be regarded as a variation, a definite tendency toward the rejection of political participation and a turning toward the higher values of life which can be sought in other ways.[19] It is not inconsistent with romanticism that it should reject the universal values of liberal technique[20]

---

[18]See Koellreutter, *op. cit.*, pp. 32, 139, 166, 192. Consult in general also Helmut Nicolai, *Die rassengesetzliche Rechtslehre* (München, 1932) and A. Hitler, *Mein Kampf* (München, 1933), Vol. II, Ch. I.

[19]See G. A. Borgese, "Romanticism," *Encyclopaedia of the Social Sciences*, Vol XIII, p. 430. Borgese notes the rejection of civil and political participation by such aesthetes as Tieck and Friedrich Schlegel. The French writer Flaubert is another example of the same trend.

which we can observe in the ideal of a wide electorate and representative, constitutional government. The personality of the leader is a symbol of the personality of the folk, and the function of the mass, that is, of public opinion, is critical and advisory rather than determinative. This is true even of councils or corporative bodies which may be set up, for their function is not to decide but to advise.[21]

The conclusion can hardly be escaped that older and liberal schemes of participation will wither under the authoritarian leader state, and that in so far as these devices are continued, even the Germanic idea of an election cannot be maintained by a high level of participation. By and large, non-voting would seem to be an acceptable corollary of the national *Rechtsstaat.*

The development of the corporative state provides a rough alternative to the liberal system of participation. In Italy membership in a professional organization or association recognized by the state is a form of political participation, and with the completion of the evolution of corporativism the traditional forms of voting may be entirely supplanted. Membership in the party is likewise a gateway to the political arena, and it should be recalled that the Grand Council of the Fascist Party is definitely recognized as an organ, perhaps virtually a sovereign organ, of the state.[22] The creation of new political machinery in authoritarian states is still in a condition of rapid flux, yet it is fairly clear that the institutionalization of the principle of political elites, whether in Italy, Germany, Russia or Poland, will gradually work toward the elimination of the passionate and intense revolutionary participation in which non-voting virtually ceases to be an observable fact. In the

---

[20]See Ernst Troeltsch, "The Ideas of Natural Law and Humanity in World Politics," in Otto von Gierke, *Natural Law and the Theory of Society 1500-1800*, tr. and introduction by Ernest Barker, 2 vols., (Cambridge, 1934), pp. K201ff.

[21]Koellreutter, in commenting on the establishment of *der preussische Staatsrat* in July, 1933, a body composed of many types of persons and occupational representatives, remarks: "In dem Staatsrat wird ausdrücklich keine formale Einrichtung, sondern ein wichtiges Organ der preussichen Staatsführung erblickt. Eine Abstimmung in Staatsrat is ausrdücklich ausgeschlossen. Der staatsräte sollen sich vielmehr as Persönlichkeiten zu den Vorlangen der Regierung äussern. *Op. Cit.*, p. 139. Cf Guido de Ruggiero, *The History of European Liberalism*, tr. from the Italian, (London, 1927), pp. 236-37, 210ff.

[22]See Werner Niederer Der Ständesstaat des Faschismus (München und Leipzig, 1932), pp. 112-13. See also in general E. L. R. Rosen, *Der Fascismus und seine Staatsidee* (Berlin, 1933); *International Conciliation*, No. 306, January, 1935, "The Political and Social Doctrine of Fascism."

long run it will be logically inconsistent to demand as a supplement to elitarism the complete participation of the mass of possible voters.

However, this time has not yet come. The revolution is yet to reach its consummation, and the mass energy of the post-war era must be recognized by those who may be the most firm believers in the single-party system as creative of the political elite which properly should exercise power. We are now in a period of mass utopianism, and the centralization of leadership in the hands of a small group, even the establishment of social dictatorship and aauthoritarianism, is perhaps an inevitable result. Men vote for the charismatic political leader, and in his hands rest the power generated by the masses on the march.[23] Utopianism in contemporary politics goes hand in hand with the apotheosis of the leader, the rise of the authoritarian state, and the sharp and overwhelming increase in political participation. Perhaps it is only the theory of the "iron law of oligarchy" of Michels and others which can adequately explain this seemingly contradictory phenomena.[24] It is not wholly unnatural that the critical observer of authoritative utopianism, whether in Russia, Italy or Germany, should believe that the tree planted with such haste should be tardy in bearing fruit.

If, then, we have come to the conclusion that the disappearance of non-voting is a sign of impending revolutionary protest; if it has been suggested that the entrance of the habitual non-voter into the activistic world of politics is, realistically, a dangerous sign, we have yet to balance this conception with an idea of long-standing historical advocacy. We have seen that Sorel believed that an increasing interest in direct action would mean diminution of participation in the traditional sense. The same conclusion has been reached by those of a more unblemished anarchistic train of

[23]See Robert Michels, "Some Reflections on the Sociological character of Political Parties," *The American Political Science Review*, XXI (1927) 753ff; Vilfredo Pareto, *Les Systemes socialistes*, 2 vols., (2e ed., Paris, 1926), for a stringent criticism of the utopian politics of the masses. The introduction to Volume I explains his theory of the circulation of elites. Spengler, *The Decline of the West*, Vol. II, pp. 386ff, explains the rise of tyranny from popular government in its extreme form.. See also C. T. Muret, *French Royalist Doctrines since the Revolution* (New York, 1933), p. 121; H. J. Laski, "Alexis de Tocqueville and Democracy," in F. J. C. Hearnshaw, *The Social and Political Ideas of some Representative Thinkers of the Victorian Age* (London, 1933), pp. 106ff.

[24]Cf. C. J. Friedrich, "Oligarchy" in the *Encyclopaedia of the Social Sciences*, Vol. XI, p. 464. Friedrich regards as inevitable the tendency of oligarchies to contract, which produces in turn a popular reaction—perhaps the kind which gave rise to oligarchy in the first place.

thought. The anarchists have, for the most part, supported a complete boycott of the athoritarian political process. With Proudhon they have held that any authority recognized in principle leads utlimately to despotism in practice.[25] Non-participation has been advocated repeatedly by those who have been disposed to reject the principle of authority. But the revolutionary anarchist has been unwilling to see a remedy in mere non-voting and non-participation in general. The revolution is necessary, and the technique of protest becomes the strategy of the mass upheaval.[26]

Experience in recent years might indicate that the anarchist dream has less footing in reality than the point of view which has been presented here. There may come a time when the revolutionary protest will take the form, in one aspect at least, of an increase in non-voting. One might well agree if non-participation could be so effectively organized as to reduce the percentage of those voting to a mere fractional part of the electorate that the situation would be as equally dangerous as perfect participation to the social and stability and energy of a society.[27] Such a condition might mean the complete demoralization of the masses and the willing surrender of ruleship to him who might desire it—on the condition that the supply of *panem et circenses* is undiminished. Some indicate that this was the condition of Roman republicanism in its latter days and during the inception of the principate.[28] In the present situation the tendency has been the other way, for the revolutionary impulse has found one form of expression in an increased enthusiasm in all forms of action, direct and indirect.

The suggestion may not be wholly without foundation that one of the strengths of the present authoritarian movements is the recognition that mass politics is ultimately irrational. Intelligent leaders must face an unintelligent social world, and the rise and

---

[25]See P. J. Proudhon, *Oeuvres complètes: Idée générale de la Révolution au XIXe siècle*, nouvelle édition (Paris, 1923), pp. 177ff. *Ibid.*, pp. 227-28, Proud hon remarks that the people do not have enough time to govern and to carry on their own affairs at the same time.

[26]See F. W. Coker, *Recent Political Thought* (New York, 1934), Ch. VII.

[27]C. E. Merriam, *Political Power* (New York and London, 1934), pp. 173ff, discusses the power of such men as Mahatma Gandhi and Tolstoy. Gandhi's power arises from peaceful political abstention, that is, from non-violent non-co-operation. Such protest tactics have been, of course, a great danger to British authority in India.

[28]But cf. Ortega y Gasset, *op. cit.*, pp. 171-72. A. F. Hattersley, *A Short History of Democracy* (Cambridge,, 1930), p. 71, observes that political participation had few attractions for the Roman citizen because of the superior position of the Senate and the magistrates.

fall of their movements is a chart of the tides of irrationality which sweep the pages of history.[29] The young and virile, if not brutal, political leaders of the group rising to power on the ruins of the old political synthesis must no doubt realize that mass participation may be revolutionary in character, and as such it must in the long run, if continued, be as great a menace to their power as to those who have been displaced. Here is surely one of the deeper springs of the advocacy of the creative minority which produces a governing class. The elite may take care of the lean years after political participation has declined and then in various forms begins slowly to rise with the uncompromising power of the flood. The pragmatists who find in the mass movements and mass voting of these critical times the natural outlet for their desire for power, must recognize that in the end they will be judged pragmatically. But this is as yet in the future.[30]

FRANCIS G. WILSON

University of Washington

[29]A very striking satirical treatment of the present-day conditions in politics is to be found in Wyndham Lewis, *The Art of Being Ruled*.

[30]See in general Rosen, *op. cit.*

GENERAL ELECTION BALLOTS IN 1934

BY SPENCER D. ALBRIGHT, JR.
University of Arkansas

Elections are seasonal like other American sports, but no sport offers such diversity as politics. Despite the fact that off-year elections are distinctly secondary in American democracy, the major interest and emphasis coming in presidential years, the election of November 6, 1934, was little behind that of 1932 in its demands upon the attention of the American voters.

In 1932 seventeen choices merely upon considerations of a statewide character were made by the "average" voter in the forty-eight states. In addition there seem to have been twelve local choices, as revealed by an examination of ballots from one locality of each of the states of the Union. In 1934 more than ten statewide choices were necessary for the average state—local selections were approximately the same as in 1932.

Kentucky had no statewide issue or candidacies; Louisiana had no offices filled by the whole state; Mississippi voters as a whole acted upon only one office; yet even including these states, and a few others somewhat similar, the average for all of the states is roughly eight offices and two and one-half propositions for each sovereign voter to pass upon, the offices and propositions affecting the entire state in each instance. The added burden for local offices and propositions is even greater, as will be shown below.

Apparently from the standpoint of ballot sizes and burdens the national "short ballot" contributes but a small proportion of the total labor and cost. Actually the selection of presidential electors and congressmen is often the chief aspect in a presidential year, and the closing of senators and representatives in Congress forms a vitally pronounced part in off-years. Ballot areas would, however, be only slightly diminished in many localities if national selections were eliminated.

The average number of aspirants to national and state offices was 26.2 per state; the total number of candidates for national and state office was 1257. The writer hazards the guess that between 100,000 and 200,000 candidates were entered for all positions in all localities in the United States on general election day in 1934.

Ballot space devoted to statewide issues and candidacies was 9537 square inches, or an average of 202 square inches per state. Using one ballot for each state the writer finds that the average

area (counting all matter for a given locality) was 398 square inches. If the local ballots examined are reliable samples for local ballots generally then district and county candidacies and occasional propositions consumed almost the same ballot area as did national and state candidacies and questions: 196 square inches for local matters and 202 square inches for statewide matters.

America is traditionally a two-party nation politically. Once in a decade a third party presents formidable opposition. Americans are informed of the existence of a half dozen minor parties which consistently enter presidential candidates, or seek representation in Congress. Such parties are the Progressive, Farmer-Labor, Socialist, Communist, Prohibition, and Socialist-Labor. Frequently textbooks in government do not list the score of other parties which enter candidates under their respective labels.

Ballots from forty-eight states in 1932 revealed twenty parties.[1] A check of ballots for 1934 shows an increase to twenty-nine.[2] It must be noted, however, that a greater average of parties entered more states in the presidential year than in the off-year. Perhaps in the off-year these parties tend to splinter still further. Or speculation may center on the possibility that the 1934 increase of minor parties over the number in the preceding presidential year is evidence of augmented political agitation. This may presage tremendous political interest for 1935—if the public did not already have ample evidence of this interest from current news items and radio broadcasts.

Table I NUMBER OF PARTIES BY REGIONS[3]

Region	No. of states	Average per state in 1932 election	Average per state in 1934 election
Total	48	5.1	4.4
New England	6	5.2	4.8
Middle Atlantic	3	6.7	8.0
East North Central	5	6.8	6.6
South Atlantic	8	4.0	2.8
East South Central	4	4.8	2.5
West North Central	7	5.3	3.9
West South Central	4	3.8	3.0
Mountain	8	4.6	4.1
Pacific	3	5.7	6.3

[1]See Table IV for the states in which each party is represented.
[2]See Table IV.
[3]The region designations are those of the United States Census.

Parties viewed by regions clearly indicate greatest activitiy of minor parties in states north of the Ohio and east of the Missisippi, and also on the Pacific Coast, and least activity in states south of the Mason and Dixon line. Individual states leading in party prolixity are New Jersey with eleven, Michigan with ten, and Washington with nine. In 1932 Michigan led with ten parties.

The Socialist and Communist parties seldom make the ballot in southern states and in certain western states such as Nebraska, Kansas, South Dakota, and Nevada.

Farmer-Labor strength centers in Minnesota, Iowa, and North Dakota. The Progressive Party is not entered in states where Farmer-Labor tickets appear. Sometimes Socialists and Farmer-Laborites co-operate, as they did on the ballot in Illinois in 1932 —both appeared but not for the same offices.

Most of the states embrace all positions and questions within one ballot. Some, however, have several ballots. For example, Nebraska in 1934 gave its voters five pieces for balloting: a blanket ballot for political officers; one ballot for amendments proposed by initiative petition and one for amendments proposed by the legislature; a ballot for judicial and educational officers, both state and local; and a separate ballot for directors of the Central Nebraska Public Power and Irrigation District.

In Wyoming in 1934 a blanket ballot was accompanied by a special ballot for the unexpired term of a United States Senator, a nonpartisan ballot for a proposed constitutional amendment, and a municipal proposition ballot for Laramie.

North Dakota has a political ballot for national and state officers, a nonpartisan ballot for local officers, and a proposition ballot.

Illinois in 1934 had a blanket ballot of a general character; also a ballot for a state bond issue; and in Chicago a municipal judicial ballot and a local proposition ballot. Confusion might occur in a Chicago election in that the voter may hold in his hand separate ballots for propositions and judicial officers and he may also see on the blanket judges to be elected and questions to be passed on. On the other hand, in Nebraska, Wyoming, and North Dakota a logical attempt is made to separate nonpartisan from partisan elections of officers and to separate propositions from both.

Vermont deserves special mention in regard to balloting sheets. In any given locality each voter gets a sheet for state officers, another for United States Senator, a third for Representative in Congress, and a fourth for local officers.

Twenty-eight states use the party-column ballot; nineteen the office-group ballot;[4] one state, South Carolina, does not have the Australian ballot.[5] Fifteen states display the party emblems on the ballot. Twenty-eight have straight ticket provisions indicated on the ballot.

Some ballot features are more evident in some areas than in others. Although party-column ballots are used in almost every region more than are office-group ballots, the latter are more frequently found in western and southern states. Yet three large eastern states, Massachusetts, New York, and Pennsylvania, also use it. Party-column states are thickest in New England and around the Lakes.

Ballots in only five states west of the Mississippi show party emblems. When the emblem is used it almost always adorns a party-column ballot. Similarly, straight ticket provisions wherever used nearly always appear on a party-column ballot. Students of political science generally regard both the emblem and the straight ticket provision as handicaps to independence of voting; and this study reveals that these features are more often attributes of party-column ballots than of office-group ballots. Party-column ballots frequently are bulkier and display more wasted space than office-group ballot. Thus economy and voting independence seem in some particulars to be better served through office-group ballots than through party-column ballots.

The numbered stub is required in about a score of states.[6] Addresses of candidates are shown on the ballots of twelve states, five being in New England. Three-fourths of the states definitely leave space for extra choices. Some go as far as to have exactly the number of spaces for extra choices as there are positions to be filled. This is a greater bid to independent voting than is the crowded ballot; extra area caused by this provision may receive the commendation of students who otherwise might disapprove of large ballots.

Full instructions are had from twenty-three ballots; brief instructions from seventeen; and no instructions are had on seven ballots. (By "brief instructions" is meant only such statements as

---

[4]See Table II for the lists of states using party-column and office-group ballots; permitting the use of party emblems; and providing for straight ticket voting.

[5]For this study no 1934 ballot was secured for South Carolina. The only facts presented are the constitutional officers voted in 1934 and an estimate of the size of the Democratic ballot paper as indicated by the actual 1932 ballot paper.

[6]See Table II.

Table II Ballots used in the Election of November 6, 1934—Form and Content (Including Maine)

State	Kind of Ballot*	Party Emblem	Straight Ticket	Stub	Statewide Voting: Number of Parties	Propositions	Positions	Candidacies	Square Inches
Alabama	P	x	x	x	4	1	16	37	179
Arizona	O		x		4	2	12	41	660
Arkansas	O				3	5	10	12	61
California	O			x	7	23	7	21	306
Colorado	O			x	6	7	11	45	140
Connecticut	P		x		7		8	46	210
Delaware	P	x	x		4		6	21	88
Florida	O			x	2	7	6	6	187
Georgia	P		x	x	2	1	17	17	132
Idaho	P		x	x	4		8	22	144
Illinois	P		x		6	2	7	39	240
Indiana	O	x	x		7		11	46	541
Iowa	O		x		6		14	66	361
Kansas	O				3	1	13	32	216
Kentucky	P	x	x	x	2				
Louisiana	P	x	x		1	14			117
Maine	P		x		3	4	2	6	264
Maryland	O			x	6	2	5	25	111
Massachusetts	O				7	1	7	42	116
Michigan	P	x	x		10	6	7	63	542
Minnesota	O				5	5	12	39	209
Mississippi	O				1	4	1	1	120
Missouri	P	x	x		5		4	16	162
Montana	P				4	1	6	18	105
Nebraska	0				2	3	13	28	245
Nevada	O			x	3	3	15	30	197
New Hampshire	P	x	x		5		1	4	114

State	Kind of Ballot	Party Emblem	Straight Ticket	Stub	Number of Parties	Propositions	Statewide Voting: Positions	Statewide Voting: Candidacies	Statewide Voting: Square Inches
New Jersey	P			x	11	1	2	15	202
New Mexico	P	x	x	x	4		13	45	367
New York	O	x			7	1	10	53	307
North Carolina	P		x		2		5	10	39
North Dakota	P				4	2	17	43	329
Ohio	P	x	x	x	7	2	8	24	152
Oklahoma	P	x	x	x	4		24	61	210
Oregon	O			x	3	3	6	18	140
Pennsylvania	O		x	x	6		5	29	138
Rhode Island	P	x	x		3	1	6	17	140
South Carolina**					1		8	8	28
South Dakota	P		x		2	3	9	18	240
Tennessee	O				3		5	11	27
Texas	P		x		4	8	12	45	214
Utah	P	x	x	x	4		3	11	72
Vermont	P		x		4		8	22	277
Virginia***	O						1	7	17
Washington	P		x	x	9	5	4	12	294
West Virginia	P	x	x		4	3	1	3	110
Wisconsin	P		x		7	1	6	40	219
Wyoming	P				4	1	9	26	242
TOTAL 19-O 28-P		15	28	17					
AVERAGES					4.3	2.5	8.0	26.2	202.0

* O—Office-group; P—Party-Column.

** No Australian ballot. No ballot papers secured for 1934; size estimated from 1932 ballot papers of the Democratic Party. Positions are for constitutional offices.

***No party designations. Seven candidates for United States Senator.

"Vote for One" or "For a Straight Ticket Vote Here." If more detailed instructions are given they are considered "Full.")

The X is used for marking in squares or circles in thirty-nine states, in two of which, California and Louisiana, a stamp is supplied and required to be used for placing the cross in the appropriate places. Three ballots examined were for the voting machine. As voting machines may be used by localities in two dozen or more states the securing or not securing pictures of the face of the voting machine is somewhat a matter of chance. In four states, Arkansas, Tennessee, Texas, and Virginia, candidates and propositions not favored are lined out, leaving untouched those favored. A fifth state, Georgia, has this method for amendments and the X for candidates. In Texas the lining out may be vertical on party columns, but in the other states each item not voted for must get a stroke of the pencil.

Printed material appeared on the back of just one dozen ballots of the set examined for the 1934 election.

The longest ballot inspected in the picture of the face of the voting machine for an Indianapolis precint. Its area is 2414 square inches. It spreads over an army cot. Its burden is for United States Senator, Member of Congress, five state judicial officers, five state administrative officers, one state senator, twelve representatives, eight local judges, twenty-five other local officials, and one local proposition. Fifty-nine choices were to be made by the voter. Two hundred and forty-six names appeared before him. At the bottom of several lines of instructions is the heavy printed notice: "Each Voter Is Allowed Not More Than One Minute In Which To Vote."

TABLE III REGIONAL COMPARISONS*

Region	Senators and Representatives-at-large	State Administrative Officers	State Appellate Courts	Statewide Propositions	All Statewide Choices
New England	1.17	4.17	0.00	1.00	6.64
Middle Atlantic	1.67	2.67	1.33	.67	6.34
East North Central	1.60	5.20	1.00	2.20	10.00
South Atlantic	1.00	3.57	1.57	1.86	7.90
East South Central	.75	3.25	1.50	.25	5.75
West North Central	1.00	8.57	2.14	1.86	13.57
West South Central	.50	8.75	2.25	6.75	18.25
Mountain	1.63	6.98	1.13	1.75	11.49
Pacific	.67	3.33	1.67	10.00	15.67
UNITED STATES	1.15	5.47	1.36	2.53	10.19

* The figures show the average per state within the region for each item listed.

TABLE IV DISTRIBUTION OF POLITICAL PARTIES IN THE GENERAL ELECTIONS OF 1932 AND 1934

Party	In 1932 only	In 1934 only	In 1932 and 1934
American	Wyo.—1		Mich.—1
Cincinnatus Non-partisan		Wash.—1	
Citizens		Conn.—1	
Civic Fusion		Del.—1	
Commonwealth		Calif., Mich.—2	
Communist	Ark., Del., Ga., Ida., Ill., Ky, Ore., R. I., S. D., Tenn., Va.—11	Calif.—1	Ala., Ariz., Colo., Conn., Ind., Ia., Me., Md., Mass., Mich., Minn., Mo., Mont., N. H., N. J., N. M., N. Y., N. D., Ohio, Penna., Tex., Utah, Vt., Wash., W. Va., Wisc., Wyo.—27
Constitutional		N. Y.—1	
DEMOCRATIC			All—48
Equal Tax		Mass.—1	
Farmer Labor	Colo., Ill. —2	N. H, N. J., N. D.—3	Ia., Mich., Minn.—3
Federalist		Wash.—1	
Honest-Economy-Loyalty		N. J.—1	
Independence	Del.—1		
Independent Citizen		Conn.—1	
Independent Veterans		N. J.—1	
Industrialist	Minn., Penna. —2		
Industrial Labor		Penna.—1	
Jacksonian	Tex.—1		

Jobless	Penna., Va. —2		
Labor		Md.—1	
Law Preservation	N. Y.—1		
Liberal	Penna.—1		Ark., Calif., Ida., Mich., Mont., N. M., N. D., S. D., Tex., Wash.—10
Liberty			
National		Ind.—1	Mich.—1
Non-Partisan		Ariz., Nev.—2	
Old Age Pension		Colo., Conn.—2	
Peoples Fusion		Ind.—1	
Peoples Progressive		Mich.—1	
Plenty for Everybody		N. J.—1	
Progressive Democrat		Calif., Ill., Wisc.—3	
Progressive Nonpartisan Republican	Ariz—1	N. D.—1	
Progressive Republican	Ia.—1		
Prohibition	Ga., Ky, Mich., Mo., Ohio, R. I., S. D., Tenn. —8	Calif., Ida.—2	Colo., Ill., Ind., Ia., Mass., N. J., Penna., Okla., Wash., W. Va., Wisc.—11
Proletarian	Mich.—1		
REPUBLICAN*			All—48
Socialist	Ga. Ky., Me., Miss., Neb., N. C., N D., Ohio, S. D., Tenn, Va., W. Va.—12	Ida., Okla.—2	Ala., Ariz., Ark., Calif., Colo., Conn., Del., Ill., Ind., Ia., Kan., Md., Mass., Mich., Minn., Mo., Mont., N. H., N. J., N. M.,

			N. Y., Ore., Penna., R. I., Tex., Utah., Wash., Wisc., Wyo.—30
Socialist Labor	Calif., Colo., Ind., Ky., Me., Md., Ohio, Ore., R. I.—9	Wisc.—1	Conn., Ill., Mass., Mich., Mo., N.J., N. Y., Wash.—8
Tax Reduction		N. J.—1	
Washington State American Liberty League		Wash.—1	
Wet	R. I.—1		

*In 1932 in Mississippi there were two of the Republican Party supporting separate electoral candidates—the "Black and Tan" and the "Lily White."

BOOK REVIEWS

EDITED BY O. DOUGLAS WEEKS

The University of Texas

Roberts, Hazel Van Dyke, *Boisguilbert* (New York: Columbia University Press, 1935, pp x, 378.)

Roberts writes about an "all-but-forgotten Norman Magistrate, who in one of the darkest periods in French history felt himself called to save his native land almost as certainly as had Joan of Arc three centuries before." She finds it "obvious" that Boisguilbert's ideas are "fundamentally modern," and quotes Witold von Skarzinski with approval as follows:

> Here at the threshold of the science itself we find the germ of all the other theories, the elements of all the philosophies of life conceived or developed later—a kind of preparatory step to the philosophy of political economy, which to date has not gone far beyond its original start.

It is not quite clear to us whether or not the author identifies "modern" with "correct" but at least Boisguilbert's "obvious modernity" leads her "to an appeciative exposition of his writings rather than to a critical analysis of them." Her basis of comparison is Adam Smith's *Wealth of Nations*. Adam Smith "brought the infant to maturity," and Boisguilbert is "modern" in terms of Adam Smith.

The science of economics we believe is not the science of the time of Adam Smith, however much the "philosophy" of that earlier day may pervade modern thinking, and however much teachers of economics may confuse the two.

The author would have us believe that Boisguilbert "posed the question and attempted the analysis which Smith later was to complete." She brings forward a great wealth of material to support her point of view; material which she handles with discrimination and presents with a wholly admirable clarity. Few indeed are the ideas expressed in the *Wealth of Nations* which do not have their counterpart in the writings of Boisguilbert. We can heartily agree with the author that here is a most worthwhile thinker undeservedly neglected, even though we have to admit insufficient "insight" to see all that Roberts claims at times for her hero.

Wherever the ideas of the two are compared, with one or two minor exceptions, Boisguilbert never comes off second-best. Thus we find that Smith is less the "realist," is "tainted with abstractions" and has less "enthusiasm" for social justice. Should it seem ungracious to mention that there may be a point of view from which abstractions do not appear as "taint," nor "enthusiasm" as necessarily virtue, it seems necessary to point out that there is current today a self-called "realistic" school of economic writers, who seemingly fail to recognize that any scientific law, economic or otherwise, is necessarily a generalization or average of some sort. It is not always recognized that to achieve scientific reality it is necessary to abstract from "naive" factual reality.

Roberts is not content with pointing out that Boisguilbert "posed the question and attempted the analysis which Smith later was to complete." She goes on to demonstrate that Smith completed the analysis "from the outline which Boisguilbert had drawn up." He merely took the completed works of Boisguilbert

as a text, and "approved, disagreed with, expanded, and added digressions," until he had the *Wealth of Nations*. It goes without saying that this is a serious charge, and we shall summarize in some detail the grounds on which the author supports her contention.

In the first place, she finds considerable "internal" evidence in the form of similarity of ideas, arrangement of material, choice of title; a few similarities in idiomatic expressions; a single reference in the *Wealth of Nations to* "many different inquiries set on foot concerning the causes" of discouragement and depression in France at the time of Colbert. This sort of "evidence," while demonstrating a common fund of ideas on which Smith undoubtedly drew, might seem more convincing as evidence of outright plagarism were it not for the fact that such evidence has many times been advanced to prove that Smith got his ideas, more or less in their entirety, from a diverse assortment of sources.

In the second place, she presents the following "external" evidence. Smith did much translating while at Oxford, "especially from the French." It is very likely that he translated Boisguilbert. Smith "must have read Quesnay and Mirabeau who specifically mention Boisguilbert." It may "safely be assumed" that Smith was familiar with the works of Voltaire where Boisguilbert is referred to "eight times." It is difficult to believe that one with Smith's "intellectual curiosity" could have missed the reference to Boisguilbert by Du Pont in the ninth number of *Ephemerides*. Adam Furguson's now classic denial, of borrowing without giving credit from Smith, is very significant. The "source unnamed" undoubtedly refers to the anonymous 1707 edition of Boisguilbert's works. Smith was "sensitive" over the question of the originality of the ideas he claimed as his own. In the light of "modern psychology" such sensitiveness is "peculiar" and "suspicious." Smith's "peace of mind," when dying, was disturbed until he finally got his friends to burn his uncompleted papers. This indicates that Boisguilbert's writings, probably "in the form of a manuscript translation," were among Smith's papers to torment his guilty mind during his dying hours.

We turn from these chapters on Smith with the observation that the author's "enthusiasm" seems somewhat to have detracted from a necessary modicum of scientific objectivity; an observation, we regret to say, which is in point for certain other portions of the book, notably with refrence to the author's strictures on Oncken's devlopment of the history of Laissez Faire. Intent on uncovering "a new claimant" for economy's hall of fame, she has not always "sought" the "fairness and exactness of thought" she demands of his critics.

C. L. STINNEFORD

The University of Texas

Tugwell, Rexford G., *The Battle for Democrcy*. (New York: Columbia University Press, 1935, pp. vi, 321).

The Battle for Democracy is the medium through which the author has chosen to present the policies and the aspirations of the New Deal legislation of the Roosevelt administration. The work, broadly considered, is a special plea for and a bold defense of the National Relief Administration and of the Agricultural Adjustment Act. The author is quite severe in his strictures on the old contrivance of trial and error in conducting the business relations of the country. Conditions under the Old Order of competition and *laissez faire* are presented in their darkest aspects in order that the glory of the New Deal may appear all the more resplendent. Tugwell takes rather seriously the dictum of Mr. Justice Brandeis, "If we would guide by the light of reason, we must let our mind be bold."

The author quite graphically sets forth what he deems the primary causes of the depression. Figures are marshaled in abundance to show how agriculture, industry, commerce, and banking had suffered since 1929. The income of agriculture fell from $12,000,000,000 in 1929 to $5,000,000,000 in 1932. During the World War the demand for American farm products increased enormously, and 45,000,000 acres of grass land was put under the plow. The carryover of wheat, cotton, tobacco, corn, and hogs introduced a grave problem for the country as a whole. The United States had entered the World War as a debtor to European nations of annual interest payments of $200,000,000, and emerged from the war a creditor nation of annual interest payments of $500,000,000 due from European governments. The demand for American products in foreign markets slumped in a startling manner, and gigantic surpluses piled up. A great drop in the prices of farm products followed. The reduction of the income of farmers led to the curtailment of industry, and millions became jobless. Another misfortune of the farmer was that the mortgages which he contracted when prices were high caused the failure of thousands of banks, and millions of farm people sought the cities in quest of employment. Reduced standards of living resulted. The depression was on with the seeming paradox of farm surpluses and city bread lines. Tugwell classically observed that a long period of tribulation prevailed.

The Old Order had been thoroughly tried, and it had utterly failed to prevent the maldistribution of industrial income. Speaking from the standpoint of the economist, the sins of the fathers had been visted upon the existing generation of agricultural and industrial workers The anarchy of the competitive system was in disrepute at the coming of Roosevelt to power. Since enterprisers cannot coöperate because of the innate selfishness of recalcitrant minorities, Roosevelt devised the New Deal whereby public interest was made a function of the government. The call for a great executive and leader in the White House was answered by the demand of a popular uprising against the Old Deal. A vigorous administration, with clear and definite objectives, established a new governmental relation to industry. The Industrial Recovery Act was an abrupt departure from a time-honored economic system. The old idea that competition protected all interests and remedied all maladjustments of society had become discredited. The time for action, quick and positive, had come. To continue theorizing and dogmatizing was unthinkable as well as intolerable. In getting results, timely and specific, Roosevelt, according to Tugwell, was the man for the occasion. Then, too, the manner in which he went about his task inspired unqualified confidence and enthusiasm.

Under the National Recovery Act fair prices for consumers and fair wages and working conditions for laborers were to be attained, and under the Agricultural Adjustment Act fair prices for farm products were to be realized. Thus the government was to act as the senior and controlling partner in the business enterprises of the country. That there were difficulties in the way the leaders of New Deal were well aware. It was recognized that the minds of men had to be trained and molded. But experiments of an economic nature were to be made if better ways of living were to be discovered. There was no taboo of experiment for the biologist. Why should there be for the economist or the political scientist?

The Battle for Demooracy, in its general makeup, is a medley of essays, addresses, and published treatises. The author as a professor of economics in Columbia University and as Assistant Secretary of Agriculture under Henry A. Wallace does not speak as a novice. Every paragraph is thought-provoking. He is enthusiastic in the project of ushering in a new era in American social and

economic life. He speaks his thoughts with force and frankness. The reader may not agree with the ideas advanced by the author, but no regrets will come from giving the contents of the work a careful perusal. The Old Order is pictured as imperfect and antequated. The reader is implored to consider the New Deal in its tenor and spirit and to ponder well the future of American society. The central thought is that it is the duty of those who would lead and direct the present social forces to rescue men from oppression.

CLAUDE V. HALL

East Texas State Teachers College

Adams, Arthur B., *National Economic Security*, (Norman: University of Oklahoma Press, 1936, pp. xii, 328).

This book is an analysis of the causes of the present depression, an evaluation of New Deal measures aimed at ending the depression, and embodies suggestions for a more effective program for creating a permanent prosperity. According to Dean Adams, the basic cause of the depression is found in the unequal distribution of income among the income receivers of the nation. Up to 1929 profits and property income received a growing percentage of the national money income and wages a declining percentage of it. The fact that such a large percentage of the national income went into the hands of a small percentage of the population meant that too large a proportion was saved instead of being spent for consumer's meant that too large a proportion was saved instead of being spent for consumers' goods These savings were spent for producers' goods, which increased still further the productive capacity of industry without making provision for an increase in purchasing power which would enable the public to buy the increasing volume of products. Such a situation inevitably led to depression.

It is maintained that the depression of 1929 was different from other major depressions in that there were not present the forces to bring about the adjustments necessary to start business on a natural recovery. The frontier no longer exists, and no new, important industries have appeared in this depression to stimulate the demand for capital goods, as the automobile industry did after 1920. Existing industries, instead of needing new equipment are suffering from surplus capacity. The building industry, which in years following 1921 contributed so much to the expansion of business activity, has been overdeveloped. In other words, after 1929 the country was faced with a situation that eventually "would develop industrial conditions similar to those of England, with a limited productive capacity, a great army of unemployed supported by doles, and a low standard of living for all except a few industrialists."

Confronted with this situation the Roosevelt Administration has carried on a varied, and not entirely consistent attack on the depression. Some measures have had as their purpose the stimulation of business activity on the theory that the present system is fundamentally sound, but needed merely a start in the right direction. Other measures aimed at reforming certain basic characteristics of the system. Still others were for the sole purpose of relieving the victims of the depression from the worst suffering.

More than half of the book is devoted to description of the various New Deal programs and analyses of their effects both on immediate recovery and ultimate reform. The analyses are made in the light of the theory that the depression was caused by the unequal distribution of the national income, and the effectiveness of the various measures is decided largely on the basis of the extent to which

they work towards a more equal distribution of purchasing power among consumers.

As a consequence of these analyses it is recommended, among other things, that the government discontinue all efforts to raise the general price level, discontinue trying to revive business through a public works program, and prohibit agreements among manufacturers with reference to prices and volume of production. To remedy the basic weakness of the present system it is further recommended that the Federal government exercise more control over the distribution of the national income. This would involve breaking up the largest estates, reducing the very large personal incomes, and influencing the division of the national income to insure wages getting a relatively larger proportion than at present.

Taxation is suggested as the logical method of reducing the large fortunes and the large incomes. The regulation of hours and wages by the Federal government is advanced as a method of increasing the income of the low income groups, although some doubt is expressed as to the constitutionality of such legislation.

It should be pointed out that a great many people will not agree with Dean Adams's analysis of the cause of the depression, which means they will not agree that securing a more equal distribution of the national income will eliminate the cyclical fluctuations of business. On the other hand, if this analysis of the cause of the depression is accepted as sound, the proposals advocated can logically be expected to work towards a more stable eonomic system.

JOHN R. STOCKTON

The University of Texas

Reiser, Oliver L., *Philosophy and the Concepts of Modern Science,* (New York: The Macmillan Company, 1935, pp. xvii, 323.)

This book recognizes the need of a comprehensive view which will unify the revolutionary results of modern science and integrate them with human culture. Such a synthesis is worth attempting even though the magnitude of the undertaking might daunt the more timid souls. The unifying scheme proposed by the author includes four main features: the method of phenomenolgy ("the descriptive point of view obtained by viewing a thing as a whole"); the organic theory of nature (which vitalizes physical reality instead of mechanizing human nature); the theory of emergence (underlying the notion of levels and needed in relating qualitative differencs to physical structures), and humanism (underlying a program of social objectives).

This review cannot enter upon a criticism of details. The general outline of the book follows the order of the above four features, elaborating each with a considerable display of erudition and relating them with ingenuity. Since what is aimed at is the integration of scientific concepts and human institutions and purposes the success of the work before us will be judged by the success with which these features are unified and made to involve other concepts of science and society. My own judgment, based perhaps on a somewhat hasty study, is that the synthesis is not wholly successful.

It is a little hard to see how the author, relying on the method of phenomenology, and therefore limiting himself to "that which *exhibits* or *displays* itself," arrives at an organic theory of nature bordering on panpsychism. Nor is it clear that organic theory of nature is reconciled to relativity. The organic theory views nature as a process or growth, and growth is a movement which is absolute. Professor Reiser thinks that the time direction of the process is marked

by "increasing complexity of parts and harmony of functional organization." But is it not the case that growth is frequently marked by simplification of structure which achieves the end more directly and by periods of discord and eruption in which a previous harmony is succeeded by violent revolution? It is only by final causes, that is by ends in view, that either society or nature as a whole breaks the reign of relativity. Finally it seems to the reviewer that pantheism, or even some form of immanent theism, would be just as consistent with the first three principles expounded as the humanism adopted by the author; and the program of the "Humanistic Manifesto" might be adopted by any liberal-minded citizen regardless of his scientific, philosophic, or religious background.

Some of the best results are obtained by Professor Reiser by investigating the borderline problems which lie between the different levels of the evolutionary process. The chapter on "Vision and Reality" seems particularly suggestive. The method of transposing laws from one level to another, however suggestive the results, is attended with serious danger. It is easy to draw highly imaginary or far-fetched analogies and to see instances of epitomizations and Hegelian syllogisms that are more poetic than scientific. Light as the link between logic and physics seems to me to be a case in point.

The book as a whole is interesting and clever. It attempts a big and important task and constitutes a contribution to the discussion if not a wholly satisfying scheme of ideas. In the details which this review does not discuss are many points with which it would have to take exception as well as very many suggestions which are novel and stimulating.

E. T. MITCHELL

The University of Texas

Feller, A. H., *The Mexican Claims Commissions, 1923-1934.* (New York: The Macmillan Company, 1935, pp. xxi, 572.)

In this volume the author presents a careful, conscientious, objective study of the background, organization and work of the claims commissions set up by Mexico and, respectively, the United States, France, Great Britain, Spain, Germany, and Italy to settle the claims arising mainly out of the revolution disturbances in Mexico between 1910 and 1920. The one exception was the general claims commission between Mexico and the United States, which had jurisdiction over general claims as far back as 1868 but not including those arising from the 1910-1920 revolutions.

Following a brief historical survey of previous claims commissions between Mexico and foreign powers the author gives a general survey of the recent commissions and then devotes several chapters to detailed treatment of special topics such as the organization and work of the commissions, claimants, responsibility of states for other than revolutionary acts, responsibility for claims arising out of the revolutions, jurisdiction over contract claims and governmental responsibility therefor, the "Calvo Clause," law applied by the commissions, rules of procedure, rules of evidence, agents and counsel, and measure of damages. Throughout the volume he evidences masterful command of the voluminous, complicated material before these commissions as well as comprehensive knowledge of claims commissions in general.

An analysis of the work of these commissions does not lend encouragement to those who advocate the employment of special *ad hoc* bodies of their type. It is true that the commissions between Mexico and, respectively, Great Britain, Germany, Spain, and Italy achieved fair success, but the same can not be said for

those between Mexico and the United States and Mexico and France. Of the more than one billion dollars in claims filed before all the commissions about five-sixths arose between the United States and Mexico; hence failure between them was especially significant. It is the author's belief—and he has strong reason therefor—that the failures and difficulties were due to several causes, as follows: 1. tribunals were constructed of two national members and one neutral member; 2. agents tended to submit every claim, however bizarre it may have been, to the tribunals; 3. the commissions had to devote too much time to rules of procedure; 4. the claims conventions were in some instances poorly drafted; 5. there was too little evidence of expeditiousness of adjudication. These are grave charges, but the evidence seems to substantiate them. On the other hand it should be noted that similar commissions between the United States on the one hand and Germany, Great Britain, and other states on the other hand at the end of the World War succeeded to a large degree in avoiding these difficulties. It is the author's belief that permanent tribunals of adjudication are definitely superior, and it would not be surprising to hear a general chorus of ayes.

For the convenience of the reader an appendix containing the several conventions and rules of procedure is added. In addition there is a table of cases and an index. A perusal of this volume will make it abundantly clear that the author has made a valuable contribution to the literture of international arbitration.

CHARLES A. TIMM

The University of Texas

McAlister, Samuel B., *Government and Law of the Texas Public School System*, (College Station: The Educational Publishing Company, 1935, pp. x, 357.)

In planning and executing the volume at hand the author adopted certain postulates which are of interest to the prospective reader. Chief among these may be noted the assumptions, first, that the public school system of Texas is part and parcel of the governmental fabric of this state, and second, that the school system can not be adequately appraised or properly evaluated except in terms of the broader political and social life of the people of the state. Accepting these views, the author proceeds to de-vacuumize the school system and to bestow upon education the consideration which it rightly deserves, namely, that due a single (if most important) public function among many whose pursuit is the logical end of government.

The subject falls naturally into six divisions, each of which is treated in a separate chapter. Chapter I deals with "The Legislature As An Agent of Public Education." The emphasis placed upon this topic is seen in the fact that more than one hundred pages are devoted to an examination of its various phases. Chapter II deals with "The Courts As Agents of Education;" Chapter III with "The County School Authorities;" Chapter IV with "The Local School Officers;" Chapter V with "Teachers' Contracts;" and Chapter VI with "Discipline." Logic is lent to the arrangement through the division of the longer chapters into two or more parts, which makes it easy for the reader to follow the approach to any particular problem.

The material examined is presented through the case method, and while some may quarrel with the author's judgment in attacking his problem through court cases, no one will question his selection of the cases presented or his discretion in editing them. It should be observed, moreover, that the author's note which follows each chapter constitutes a crisp, terse, and quite effective statement of the problem with which the cases deal.

Government and Law of the Texas Public School System is a distinct contribution to the literature of education in Texas. Written by a political scientist, it places the emphasis in our school system on the governmental aspects of education, where it belongs. From the "practical" point of view it will serve admirably as a handbook for any one interested in public school education. Among those to whom the volume will prove valuable are school superintendents, city and county, and principals. Further, any teacher or, for that matter, any citizen who wants to know more about our educational system will find no better source of information on the government and law of the public schools of Texas than the volume here reviewed.

ROSCOE C. MARTIN

The University of Texas

Thomas, Allred Barnaby, *After Coronado. Spanish Exploration Northeast of New Mexico, 1696-1726. Documents from the Archives of Spain, Mexico, and New Mexico.* (Norman: University of Oklahoma Press, 1935, pp. xii, 307.)

Although this volume deals only with that comparatively small section which might be called the "New Mexico Front" of the great Spanish Indian frontier, it graphically illustrates the history of the larger area. The picture presented here in miniature is that of conflicting interests among Indian tribes in the west and the wars which result from this pressure for land, hunting grounds, and trade. We find unfolded for us in this volume also that almost common-place scene of the Indians' flight from white man's home for them and the Spanish military expedition following in the red man's wake in an effort to overtake and retrieve the deserters. The patience of the Spaniards in their dealings with the natives is revealed along with their less admirable, but at times quite understandable, display of temper and desire for revenge. Some who have been severe in their judgment of the conqueror will find in this volume material which might persuade them to temper those judgments somewhat in the light of Spanish sympathy, understanding, and tolerance apparent in some of the documents. The documents also relate the story of Spain's methods of control and protection for her distant Indian frontiers; as well as the all too frequent and dangerous indecision and delay on the part of administrative officials of the Spanish crown in America. Another characteristic feature of the period is that sometimes latent but often active and acute fear of the foreign aggressor. The peace of mind of viceroys, governors, and isolated colonists is often upset by French activities and more often by material evidence of French and Indian trade relations.

Long years before the days of the Anglo-American explorers of the Great Plains and the western mountains, Spaniards were leading expeditions through those areas and writing detailed accounts of the country, of its Indian inhabitants, and of their own hard earned successes or bitter failure to higher authorities back of the frontier and in Europe. These documents destined to be written, read and forwarded from office to office through the troublesome years found refuge at last in distant archives; and the western country waited to have rediscovered by daring your republicans the facts long forgotten in old Spain. Professor Thomas has brought the older story out from its obscurity and has thereby made a valuable contribution by helping to fill in one of the wide gaps in frontier history.

The reviewer, having read this account of hardship and conflict, can but repeat Professor Thomas' statement that "The marvel is that Spain successfully retained possession of New Mexico flung so far across the northern border of New Spain."

The first forty-nine pages of this attractively made up volume constitute the "Historical Introduction" which summarizes and comments on the documents translated in the second part. There are twenty-three pages of editorial notes, seven pages of bibliography, and an index.

JOHN C. PATTERSON

Westminster College
Fulton, Missouri

White, Horace, *Money and Banking.* Sixth edition prepared by C. S. Tippetts and L. A. Froman. (New York: Ginn and Company, 1935, pp. xiv, 808.)

This volume represents a laudable attempt to bring up-to-date and to restore to current use one of the classic American textbooks on the subject of money and banking. The first edition of this well-known book by Horace White was published in 1895. During the author's lifetime, the volume went through four more editions, the last of which appeared in 1914. Until the work became out-dated, it was one of the most widely used textbooks in its particular field in the United States.

The authors of this 1935 edition of White's *Money and Banking* have attempted to bring the book up-to-date, while at the same time preserving the viewpoint and writing style of Horace White. As much of the earlier text was retained as seemed possible, but the tremendous changes which have occurred in the field of money and banking during the past two decades necessitated the addition of much new material as well as a radical revision of a great portion of the original text. Not more than one third of the volume remains as Mr. White revised it in 1914.

The organization and content of the volume are quite typical of the standard textbook in the field. The subject of money is considered first then commercial banking and central banking, somewhat more than half of the book being devoted to the latter two topics. The viewpoint throughout is quite orthodox and conservative, very little in the way of new facts or theories being advanced.

The general purpose of the book is to set forth monetary and banking principles and to describe the monetary and banking system now in use in the United States. To accomplish this end, the historical method of approach was adopted. Accordingly, a very large portion of the volume is devoted to a rather detailed historical development of money and of banking in the United States. Since the monetary side is developed separately from the banking aspect, a considerable amount of repetition was inevitable. Much space could have been saved had the treatment of these two topics been consolidated.

The book is well written and thoroughly readable. Exceptionally good outline treatment is found on the subjects of monetary standards, the development of the post-war international financial crisis, and monetary and banking legislation in the United States during the 1930-1935 period. The presentation of the then proposed Banking Act of 1935 in an Appendix is extremely helpful

JAMES C. DOLLEY

The University of Texas

Simonds, Frank H., *American Foreign Policy in the Post-War Years.* The Albert Shaw Lectures on Diplomatic History, 1935. (Baltimore: The Johns Hopkins Press, 1935, pp. vi, 160.)

The title to this book is somewhat misleading, for the reader would naturally infer that it deals with the general foreign policy of the United States since the

Great War An Introduction of twenty pages is followed by six chapters dealing with "The Economic Aspect," "World Peace," "Security," "Disarmament," "From Wilson to Roosevelt" and "The Future." From this one may readily infer that the theme centers around Geneva. It is true that a great deal of our post-war diplomacy has been concerned with avoiding commitments with the League of Nations and co-operating indirectly or directly with it and its members in attempting to secure certain results while avoiding entanglements, but in that same priod we have made some important diplomatic history relating to American states. Yet Argentina and Mexico are the only two Latin-American states mentioned, and they are referred to only once in a casual way. There is not a word about the Chaco and Leticia disputes, our trouble with Mexico, Nicaragua, or the revolution in our Latin-American policy wrought by President Roosevelt II.

The chapter on "Economic Aspects" discusses the war debts and the impossibility of their ever being paid under our high tariff policy with a favorable balance of trade. In "World Peace" Mr. Simonds starts out with "the two futile congresses held at the Hague," which most people do not consider to have been altogether futile, and concludes that "the American people wanted a world peace profitable to themselves without paying for it" and cites "the anodyne prescription of the Kellogg Pact and the Washington Treaties." In "Security" and "Disarmament" he justifies France, exposed as she is to attack, in refusing to disarm without security, but has nothing to say about Britain's contention that disarmament will give security. He also thinks that the nations follow economic nationalism and that the idea of war as a crime was invented and pressed by those nations which have about all they want. For "The Future" he suggests: "For peace, arbitration; for security, naval parity; for prosperity, protective tariff; and for armaments, limitation." (Evidently he must not ever have expected the debts to be paid.) Arbitration must include not only peace time differences, but "the invasion of American neutral rights when Europe is at war." For peace with Japan he advocates abandonment of the doctrine of the Open Door in the Far East and allowing Japan to have a free hand

DAVID Y. THOMAS

University of Arkansas

Labaree, Leonard Woods, (Ed.), *Royal Instructions to British Colonial Governors*, 1670-1776, (New York: D. Appleton-Century Co., 1935, 2 vols., pp. xxv, 462; ix, 463-937.)

This compilation of Royal Instructions to British Colonial Governors, published under the direction of the American Historical Association from the income of the Albert J. Beveridge Memorial Fund, is most valuable not only to historians who are interested in the development of British colonial policy, but also to students of government who seek in the relationships existing in the colonial scheme of government an explanation of many subsequent governmental developments in the American states during and after 1776. Selecting the year 1670 as the starting point because of the attainment of "sufficient uniformity and regularity" in the instructions "to make collation possible," Professor Labaree has performed a laborious and meritorious service in collating within 1,076 numbered articles in the two volumes "the 20,000 to 25,000 articles comprising the entire collection of instructions, general, trade, and additional, which were issued to the royal governors in America between 1670 and the Declaration of Independence." Covering twenty-three colonies subject to British control on or near the North American

continent these instructions reveal in a most interesting manner the wide range of British colonial policy, political and social.

The topical arrangement of the articles, and the listing of the instructions within each sub-topic alphabetically and in chronological order, provide a convenient method for the investigation of any particular policy. The insertion of cross-references, moreover, facilitates the tracing of the history of instructions on any subject throughout the entire period. A perusal of this work will show the care with which the editor has approached his task and the difficulties which were doubtless faced in its preparation. His reward should be the service which he has performed for others.

Although both volumes are necessary for an understanding of the whole of British colonial policy, Volume One is the more valuable from a strictly governmental point of view. In this Volume are to be found instructions relating to the governor and council, the assembly, legislation, revenue and finance, currency, salaries, justice, judicial and administrative officers, military affairs, and martime affairs. For an understanding of the Governor's position in colonial America, this work will be most helpful.

J. ALTON BURDINE

The University of Texas

Caughey, John Walton, *Bernardo de Gálvez in Louisiana*, 1776-1783., [Publications of the University of California at Los Angeles in Social Sciences, vol. 4.] (Berkeley: University of California Press, 1934, pp. xii, 290.)

Bernardo de Gávez had a very interesting career as governor of the frontier province of Louisiana at a most exciting time during the American Revolution. While Spain was still neutral, he assisted the American patriots by facilitating American shipping by sea and up the Mississippi River and sending supplies to Washington's army and the army of the west. Because of the aid from New Orleans the Americans were able to establish their control west of the Alleghanies. Gálvez was the financial backer of the expedition which won the northwest. When Spain entered the war against England in 1779, the energetic governor of Louisiana was prepared to combat the English openly and was eager for direct action. He planned the campaign for the capture of the British posts along the lower Mississippi in spite of timid advisers and disconcerting disaster, and inspired the creoles to participate actively in the drive. In 1781 after the St. Joseph expedition, the duel over the Mississippi was settled in favor of Spain and English rule was destroyed along that river. The capture of Mobile and Pensacola was undertaken by Gálvez against great odds, but he was successful and saved West Florida for Spain. On account of his heroic work he was promoted, made a count, and had his slaray raised by the king. He directed the siege of the Bahama Islands and made great preparations for an attack on Jaimaca, which never materialized, as the war ended too soon. His victories caused England to be more generous to the United States with respect to the Trans-Alleghany West and made it possible for the Mississippi River to be the western boundary instead of the Alleghanies.

As viceroy of Mexico from 1785 to 1786 the dashing young man was very popular and, although his career was meteoric, he was granted wider jurisdiction than any of his predecessors with Cuba, the Floridas, Louisiana, and the Provincias Internas under his control; he, indeed, ruled all Spanish North America.

Unfortunately this work is far from being a comprehensive account of the life of Gálvez as stated in the preface. The description of his early life, his so-

journ in Nueva Vizcaya, Europe, Havana, and Mexico City is certainly very brief and sketchy. The place and date of his birth are not mentioned, nothing is related concerning his parents, his social surroundings, and education. His uncle, the great Jose de Gálvez, is referred to several times, but the Gálvez family should not be neglected. Neither are the international affairs and conditions which led Spain to enter the American Revolution treated.

Fifty-seven pages devoted to the background of Spanish Louisiana before Gálvez was appointed governor are hardly necessary in a book of two hundred and ninety pages. By far the best part of the book is that which deals with the participation of Gálvez in the American Revolution and his relations to the United States. Those one hundred and fifty-eight pages are based on extensive research and give an interesting account of the military activities of Gálvez whose greatest achievement was the capture of Mobile and Pensacola.

Certain inconsistencies, incorrect dates, and inaccurate translations have been noted. There is a bibliography of fourteen pages, but not all of the Gálvez material has been listed among the manuscripts. As a worker in the Spanish Archives, it is to be expected that the author should have found the other essential material pertaining to the life of Gálvez.

The work is interesting, readable, and useful for the role played by Gálvez in the American Revolution. It is a contribution to the local history of Louisiana.

LILLIAN ESTELLE FISHER

Oklahoma College for Women.

Saito, Hirosi, *Japan's Policies and Purposes*, (Boston: Marshall Jones Company, 1935, pp. x, 231.)

Hirosi Saito the Japanese Ambassador to Washington, presents a selection of more than twenty of his recent addresses and writings in *Japan's Policies and Purposes*. Although the title of the first chapter is "Psychological Disarmament and Japan's Attitude in the Naval Matter" and that of the last is "The Cherry Blossoms" there is recurring theme of the desire for a "peace mentality" in both chapters as well as in the intervening ones.

The author emphasizes over and over again that the mission of Japan in the Far East is to establish law and order so that the Japanese, Chinese, Koreans, and Manchoukuoans may enjoy safety, progress, and prosperity. He attempts to ease the minds of Americans who fear for the vulnerability of the Philippines by declaring that Japan has no covetous designs toward these islands and that his nation is willing to pledge itself to safeguard their independence.

Ambassador Saito declares that the people of Manchuria founded the new state of Manchoukuo in the wake of Japanese military action. He compares the formation of the new state with that of Poland, Czecho-Slovakia, and Jugo-Slavia, which owe their existence to allied action in and after the World War. He states that Japan did not declare war against China because of the Manchurian affairs, but that his country merely sent a punitive expedition in self-defense.

The training received in the Law School of the Imperial University and the wide experience gained in the Foreign Service of his country have enabled Hirosi Saito to present an effective brief to the non-discriminating for Japan's policies, but to those persons who would more carefully analyze the same brief the arguments are not so convincing. It will take stronger proof to persuade them that Japan's rôle in Asia is merely that of the Good Samaritan. For example the quizzical readers will ask why the Japanese waited until all of the larger nations were interested in Mussolini's unofficial war in Africa before the Japanese openly defined their position in regard to the five northeastern provinces of China.

The style of writing is effective in that the sentences are short and the selection of words is good. The average reader will have no difficulty in understanding the arguments presented by Ambassador Saito.

DORSEY D. JONES

University of Arkansas

Stormzand, M. J. and Lewis, Robert H. *New Methods in the Social Studies*, (New York: Farrar and Rinehart, Inc., 1935, pp. ix, 223).

The purpose of the book herein discussed is, in the words of the authors, "to present an extended description and explanation of a few of the most widely used and most successful . . . plans for the teaching of the social studies." With this purpose in mind the chapters are devoted to the unit plan, workbooks and study guides, current problems, and events, socialized methods, the laboratory method, integration of social studies and English, modification of traditional methods and objectives in the social studies.

This book is perhaps more suitable for experienced teachers in secondary schools than for students in training but even for the latter it furnishes a picture of the possibilities and limitations of each method discussed. The chapter on integrating social studies and English, the one which is most likely to invite critical reading, leaves the reader in doubt as to the advisability of making administrative adjustments necessary to the carrying out of such a plan. This is particularly true, if the suggested outline in which there is actually very little correlation, is to be followed.

Each chapter is followed by a short bibliography confined largely to textbooks. The reader may well feel that more attention should have been given to other materials in the field of method. Although many readers will certainly doubt that some of the new methods are applicable in the typical school situation, this book merits and should receive the consideration of college and secondary school teachers.

HENRY KRONENBERG

University of Arkansas

BOOK NOTES

Professors William S. Carpenter and Paul T. Stafford in their recent volume entitled *State and Local Government in the United States* (New York: F. S. Crofts and Co., 1936, pp. 351) have succeeded in presenting a modernized treatment of state and local government. For scholarship, arrangement of materials, and agreeable style the volume is perhaps remarkable. Commonly, political processes receive most attention in textbooks on state and local government, but here such has been subordinated to a consideration of current problems of government. The authors throughout the work have sought to give more emphasis to functions rather than to structure of government.

The material is discussed under three main divisions, Part I treating of "The Structure of State and Local Government" with a beginning chapter dealing with "The Growth of State and Local Government." This chapter appealed to the reviewer as being one of the best. Part II is given over to a discussion of the "Problems of State and Local Government" where such matters as finance, health, public welfare administration; education and recreation; law enforcement; and planning are considered. In Part III there is a brief treatment of "Recent Trends of State and Local Government." Although appearing in a

different from throughout the volume, perhaps a separate chapter might well have been devoted to national-state relations and another to national-local relations. The volume is one that can be readily used as an introductory text for beginning courses in state and local government.

S. A. M.

The literature of the history of imperialism is being enriched by an increasing number of monographs on particular areas and epochs. Just as Puryear's *International Economics and Diplomacy in the Near East* sheds light on British policy in the Levant during the two decades previous to the Crimean War so does Professor F. R. Flournoy's *British Policy Towards Morocco in the Age of Palmerston* (1830-1865) (London: P. S. King & Son, Ltd., Baltimore: The Johns Hopkins Press, 1935, pp. xiii, 287) throw into strong relief the dominant elements in Britain's policy in this period toward those "backward states" that she did not wish to acquire for herself. In brief, that policy, exemplified in the present instance in Morocco, sought to preserve Moroccan independence against the aggression of Britain's rivals in Europe, to settle amicably Morocco's international disputes, to maintain the open door, to increase British prestige and influence in Morrocco's internal affairs, to develop the capitulations, and to promote British trade. In pursuing these ends, Britain did not always refrain from playing Spain against France or from using the Riffian pirates as a barrier against French encroachment. The author of this monograph is to be commended for his careful documentation and for his handling of material, much of which, standing alone appears insignifiicant.

C. T.

Social Work with Travelers and Transients (Chicago: The University of Chicago Press, 1935, pp. ix, 118,) by Grace Eleanor Kimble, presents a history of the development of travelers aid societies and a description of the work they now do. The difficulties of the various classes to whom aid is tendered, such as children traveling alone, runaways, and dependent non-residents, are given in some detail, individual cases being included as illustrations. In many instances the traveler's predicament is found to be only an incident in a situation involving other social maladjustments The travelers aid worker deals with such cases either by giving attention to them herself or by enlisting the assistance of other properly qualified agencies. It is evident from this book that travelers aid has grown up in connection with railroad travel and that its methods are best adapted to this form of transportation. The recent increased use of busses and automobiles for travel, especially by the classes of persons most often in need of help, has necessitated a change in travelers aid procedure. But this change, it appears, has not yet been accomplished.

C. M. R.

The Making of Modern Iraq (Norman: University of Oklahoma Press, 1935, pp. ix, 319), by Henry A. Foster, is a sympathetic but withal scholarly study of Iraq from the period of the World War to its emergence from the quasi-mandatory stage to the status of a nominally independent state. The author does not content himself with a simple narrative but presents likewise an excellent picture of British control and administration under the treaties that were accepted in lieu of a regular mandate from the Council of the League. Special emphasis is laid upon Iraqi-Turkish relations, particularly as regards the Mosul area. The

influence of oil is evident throughout the story of the diplomatic maneuvers. Although students of imperialism and of the mandatory system are indebted to the author for this treatise, they will probably entertain doubts whether at least two quetsions have been cleared up, to wit., in taking the steps it did in the Mosul affair and in the procedures leading toward the termination of the "mandate" did the League, with all its elaborate inquiries and careful exhibitions of independence, have any choice but to approve a course laid before it by Britain, and second, to what extent was independence for Iraq a gain or a loss for Britain?

C. T.

A History of Farmer Movements in the Southwest 1873-1925 (A. and M. Press, A. and M. College of Texas, College Station, Texas, 1935, pp. 192) by R. L. Hunt presents an effective summary of four successive major farmer organizations in the Southwest, but with particular emphasis upon the Texas organizations. Part I deals with the rise and decline of both the Grange and the Farmer's Alliance, clearly indicating not only the economic activities but also the political and educational effects of each. The development and results of the Texas Farmers' Union are described and analyzed in Part II by a cogent presentation of its fraternal, social, educational, and economic benefits. In the third and final Part the Farmer-Labor Union in Texas is shown to have been patterned after the earlier Grange, Farmers' Alliance, and Farmers' Union. It attempted to unite all types of farmers under one organization and one program, and failed as the other three, because of a lack of recognition of the principle of commodity organization.

F. S.

One of the most useful collections of documents of American history, from the standpoint of the political scientist, is to found in Henry Steele Commager's *Documents of American History* (New York: F. S. Crofts & Co., 1935, 2 vols., pp. xiv, 454; xii, 454), which has recently been issued in a two-volume edition. Of 486 documents that appear in this edition, 244 are given in Volume One, which begins with a grant of privileges and prerogatives to Columbus in 1492 by Ferdinand and Isabella of Castile and ends with Lincoln's last public address of April 11, 1865. Volume Two begins with establishment of the Freedmen's Bureau by Act of Congress on March 3, 1865 and includes, as the final document, the "Anti-War Treaty of Non-Aggression and Conciliation" of June 15, 1934, which extended the principles of the Kellogg-Briand Pact to Mexico and certain South American States. To those interested in our constitutional and governmental history, the attempt of the editor to limit his selection of documents to those primarily "of an official and quasi-official character" makes this collection a handbook of considerable value

J. A. B.

Interntional Economics and Diplomacy in the Near East, 1834-1853 (Stanford University: Stanford University Press, 1935, pp. xiii, 264), by Vernon John Puryear, presents an illuminating picture of the diplomatic history of the Near East from the date of the Turco-Egyptian Peace of Kutiah and the resulting Turco-Russian treaty of alliance to the eve of the Crimean War. As the subtitle more correctly states, it is "a study of British commercial policy in the Levant, 1834-1853." The author made a thorough, diligent search among the pertinent archives, and the result is a well written, well documented volume revealing the warp and woof of circumstances that led to a gradual intensification of Russo-

British rivalry in that region. It is another proof of the allegation that present-day chancelleries, foreign services, and armed forces are not the only ones that have served well the interests of private commercial and industrial groups within the several states.

C. T.

According to Elizabeth Green Gardiner's *Convalescent Care in Great Britain* (Chicago: The University of Chicago Press, 1935, pp. xii, 163), this country has about twice as many beds for convalescents as the United States. In view of the greater population of the United States, the observed difference furnishes conclusive evidence of the neglect of convalescent car in America. The book contains numerous tables showing the number of beds, the number and type of convalescent institutions, expenditures, and other pertinent facts. There are also descriptions of the historical development of convalescent care and of the methods of operation and financing employed by the British institutions. The monograph should be of value to anyone attempting to demonstrate the necessity for improving the facilities for convalescent care in the United States.

C. M. R.

In *The Juristic Status of Egypt and the Sudan* (Series LIII, Number 1, The Johns Hopkins University Studies in Historical and Political Science, Baltimore: The Johns Hopkins Press, 1935, pp. 184), the author, Vernon A. O'Rourke, employs the mode of procedure of the analytical school of jurists to determine the constitutional position of these entities. The point of departure in each case is the concept of state sovereignty formulated by Professor W. W. Willoughby. In this manner he is able, after a careful analysis, through four chapters, of the manifold ways in which Britain's power and authority infringe upon Egyptian affairs, to reach the conclusion that in regard to its constitutional or internal status "Egypt is a sovereign state in the full sense of the term." Internationally it possesses personality but must be regarded as a client state of Britain. This purely juristic conception of sovereignty may create a curious estrangement between law and fact but undoubtedly such an approach has certain compensations. The final chapter is devoted to the Sudan and emphasizes "a situation of fact which explicitly contradicts the juristic status of that country." There is a bibliography and an index.

C. T.

Constitución de la República del Tucuman, Año 1820, by Ernesto H. Celesia (Buenos Aires: Julio Suárez, Editor, 1935, pp. xxii), 69, is the history of the attempt to establish a frontier Andean republic in Argentina when all South America was struggling for its independence from Spain. The figures and events in this attempt stand out clearly, although briefly told, and a facsimile of the constitution, page for page, makes the document all the more vivid. Celesia is an Argentine historian of note.

L. L. B.

L. Peru de La Croix' *Diario de Bucaramanga* has been republished in a new and fuller edition by the Venezuelan historian, José E. Machado (Editorial "Elite," Caracas, (1934), pp. xix, 194. This diary is of particular importance because it records so much of the public and private life of Bolivar in Colombia

and portrays the political currents and social conditions of the time when it was wirtten (1828). Several engravings give a personal touch to the volume.

L. L. B.

Villa del Rosarios: Documentos para su Historia, by P. Grenón, S. J. (Cordoba: Author, 1935) is a record of the antiquities of this village in the interior of Argentina giving an account of the families, history, architectural remains, and various other materials collected over a long period of years. Some 24 group engravings present the Indian and frontier antiquities of value to the historian and archaeologist.

L. L. B.

INDEX

CONTENTS—VOLUME XVI

Number 1—June, 1935

The Southwestern Social Science Association

PRESIDENT
A. B. Adams, Norman, Okla.

FIRST VICE-PRESIDENT
J. Alton Burdine, Austin, Texas

SECOND VICE-PRESIDENT
A. S. Emig, Columbus, Mo.

THIRD VICE-PRESIDENT
John Rydjord, Wichita, Kan.

SECRETARY-TREASURER
Stuart A. MacCorkle, Austin, Texas

EXECUTIVE COUNCIL

A. B. Adams, President, Norman, Okla.

C. S. Potts, Ex-President, Dallas, Texas
C. Perry Patterson, Ex-President, Austin, Texas
J. Q. Dealey, Ex-President, Dallas, Texas
J. F. Zimmerman, Ex-President, Alburquerque, New Mexico
D. Y. Thomas, Ex-President, Fayetteville, Arkansas
H. Y. Benedict, Ex-President, Austin, Texas
M. K. Graham, Ex-President, Graham, Texas
Elmer Scott, Ex-President, Dallas, Texas
W. B. Bizzell, Ex-President, Norman, Oklahoma
W. M. W. Splawn, Ex-President, Washington, D. C.
George Vaughan, Ex-President, Fayetteville, Arkansas
J. G. James, Ex-President, Athens, Ohio
J. Alton Burdine, First Vice-President, Austin, Texas
A. S. Emig, Second Vice-President, Columbus, Mo.
John Rydjord, Third Vice-President, Wichita, Kansas
Caleb Perry Patterson, Eidtor-in-Chief, Austin, Texas
Stuart A. MacCorkle, Secretary-Treasurer, Austin, Texas

Elected Members:

H. W. Blalock, Fayetteville, Arkansas
W. D. Rich, Abilene, Texas

THE SOUTHWESTERN SOCIAL SCIENCE QUARTERLY is supplied to all members of the Southwestern Social Science Association. The subscription price of the QUARTERLY is three dollars a year. Applications for memberships, orders for the QUARTERLY, and remittances should be addressed to Stuart A. MacCorkle, Secretary-Treasurer of the Association, University Station, Austin, Texas.

Correspondence with reference to contributions to the QUARTERLY should be addressed to Caleb Perry Patterson, University Station, Austin, Texas.

SALE OF BACK NUMBERS AND PROCEEDINGS

BACK NUMBERS

The Association is still in a position to supply all back numbers of the QUARTERLY. The supply of certain numbers is almost exhausted, consequently libraries and individuals interested in securing replacements or full sets should place their orders without delay. Volumes are unbound. Prices, which are net cash on delivery and cover transportation charges, are as follows:

$2.50 per volume; $0.75 per number.

PROCEEDINGS

The Association published the PROCEEDINGS of the Fifth and Sixth Annual Meetings (1924 and 1925). Some copies are still on hand and may be had at the following prices, net cash on delivery, with transportation prepaid:

$0.50 per copy, paper binding; $1.00 per copy, cloth binding (PROCEEDINGS for 1925 meeting only).

Address orders for either the QUARTERLY or the PROCEEDINGS to

The Southwestern Social Science

University

Austin, Texas